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TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1554

TO RATIFY AND IMPLEMENT WATER SETTLEMENTS INVOLVING THE PYRAMID LAKE PAIUTE TRIBE, THE STATES OF CALIFORNIA AND NEVADA, AND OTHER PARTIES REGARDING THE WATERS OF THE TRUCKEE AND CARSON RIVERS AND LAKE TAHOE IN NEVADA AND CALIFORNIA, TO PROVIDE FOR ENHANCEMENT OF ENDANGERED AND THREATENED SPECIES, AND TO PRESERVE VALUABLE WETLANDS AND FOR OTHER PURPOSES

FEBRUARY 6, 1990

Printed for the use of the
Committee on Energy and Natural Resources

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TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT

TUESDAY, FEBRUARY 6, 1990

U.S. Senate,
Subcommittee on Water and Power,
Committee on Energy and Natural Resources,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Bill Bradley, presiding.

OPENING STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY

Senator Bradley. Today the subcommittee will consider S. 1554, sponsored by the Nevada's senior Senator, Mr. Harry Reid.

Let me say at the outset that we have a large number of witnesses to hear from today. This is an important piece of legislation. The subcommittee has many questions and therefore I will try to hold witnesses after the first two panels to a very tight time limit, which I will state at the beginning of the panel.

We have received most testimony within the committee-designated 24-hour period. However, some testimony was not submitted 24 hours prior to the subcommittee hearing. I will have comments about that testimony at the appropriate time.

S. 1554 is unusually complex and, frankly, unusually promising. It promises a future for Pyramid Lake. It promises a future for the lake's fisheries and the Native American tribe that has relied on those fish for millennia. This legislation promises also a future for western Nevada's wetlands and the multitude of waterfowl dependant on those wetlands.

The legislation promises a fair allocation of Truckee, Carson, and Lake Tahoe water between California and Nevada, and offers assurance that water will be available to meet expected growth on both sides of the border.

I want to commend Senator Reid and his staff and the many individuals and organizations who made an incredible effort on behalf of their region, and in good faith brought this bill together. I think it is a remarkable achievement. S. 1554 is now before the subcommittee because people were willing to work through old animosities and conflicts to try to come up with an arrangement serving the broadest public interest.

I recognize that S. 1554 offers many benefits to Nevada and the Nation. I also recognize that it doesn't resolve every issue on the Truckee and Carson.

I am particularly concerned that the parties have not yet found a way to address the claims of the Fallon Paiute-Shoshone Tribe. The tribe has been poorly served by the United States. They have legitimate claims. This subcommittee will not contribute to their mistreatment. On this matter and other matters we will work closely with the Committee on Indian Affairs.

It is also disappointing that the Truckee-Carson Irrigation District was unable to find within the negotiations that produced this bill a means to resolve its concerns regarding the future of the Newlands Reclamation Project. Senator Reid and I have discussed these outstanding issues, andI would like to have everyone know that the subcommittee will provide the Fallon Tribe and the TCID a reasonable amount of time, say, about 90 days, during which to develop and negotiate constructive, realistic proposals for the resolution of their concerns in a manner consistent with the rest of S. 1554.

During the next 3 months we will be willing to work with all parties to achieve the maximum scope of consensus. But, the benefits of S. 1554 are too substantial to forgo through delay or obstruction. That is why the 90-day limit is there. If we can't agree, if all parties can't agree, then we're going to push ahead and act as the subcommittee and the committee think is in the best public interest.

I have certain other concerns with the bill that are comparatively minor, and I will raise these points during the course of the hearing.

I hope and have confidence that S. 1554 ultimately will win the support of the Congress. This bill continues the pattern of legislation marking our country's efforts to come to grips with and resolve the environmental impacts of western water development. S. 1554 is just another example of a positive trend.

On the Columbia River, the 1980 Northwest Power Planning Act is bringing about restoration and enhancement of that basin's fish and wildlife. On the Upper Colorado, efforts have been moving ahead to protect and restore endangered native fish species. In North Dakota, the Garrison Diversion Unit was restructured to strike a fair balance between irrigation development and wetland protection. These are all positive developments, and I believe that the trend marked by S. 1554 should and will be expanded to other regions and to other valleys where Federal water development has claimed an unreasonably and unnecessarily high toll on fish, wildlife, and environmental quality.

S. 1554 marks a continuation of a positive and promising trend for the West. The subcommittee welcomes this bill and this hearing, and in good faith urges all participants to give the subcommittee your best counsel.

[The prepared statements of Senators Bradley, Cranston, and Wilson, and the text of S. 1554 follow:]

Opening Statement

Senator Bill Bradley, Chairman
Subcommittee on Water and Power

Hearing on S. 1554 - February 6, 1990

* * *

TODAY THE SUBCOMMITTEE WILL CONSIDER S. 1554, SPONSORED BY NEVADA'S SENIOR SENATOR, MR. REID.

THIS BILL IS UNUSUALLY COMPLEX, AND UNUSUALLY PROMISING.

S. 1554 PROMISES A FUTURE FOR PYRAMID LAKE, THE LAKE'S FISHERIES, AND THE TRIBE THAT HAS RELIED ON THOSE FISH FOR MILLENNIA.

THIS LEGISLATION PROMISES ALSO A FUTURE FOR WESTERN NEVADA'S WETLANDS AND THE MULTITUDE OF WATERFOWL DEPENDENT ON THOSE WETLANDS AS AN IRREPLACEABLE LINK IN THE INTERNATIONAL CHAIN OF HABITAT THAT COMPRISES THE PACIFIC FLYWAY.

THIS LEGISLATION PROMISES A FAIR ALLOCATION OF TRUCKEE, CARSON, AND LAKE TAHOE WATER BETWEEN CALIFORNIA AND NEVADA AND OFFERS ASSURANCE THAT WATER WILL BE AVAILABLE TO MEET EXPECTED GROWTH ON BOTH SIDES OF THE BORDER.

I WANT TO COMMEND SENATOR REID, HIS STAFF, AND THE MANY INDIVIDUALS AND ORGANIZATIONS WHOSE COMBINED EFFORT AND GOOD FAITH BROUGHT THIS BILL TOGETHER. IT IS A REMARKABLE ACHIEVEMENT, MADE POSSIBLE BY HARD WORK, COURAGEOUS LEADERSHIP, AND AN ABILITY TO SEE AND REACH FOR THE COMMON GOOD THAT SO OFTEN LIES HIDDEN ON THE FAR SIDE OF OLD ANIMOSITIES AND CONFLICT.

I RECOGNIZE THAT, WHILE S. 1554 OFFERS MANY BENEFITS TO NEVADA AND THE NATION, IT DOES NOT RESOLVE EVERY ISSUE ON THE TRUCKEE AND CARSON.

I AM PARTICULARLY CONCERNED THAT THE PARTIES HAVE NOT YET FOUND A WAY TO ADDRESS THE CLAIMS OF THE FALLON PAIUTE-SHOSHONE TRIBE. THE TRIBE HAS BEEN POORLY SERVED BY THE UNITED STATES. THEY HAVE OBVIOUSLY LEGITIMATE CLAIMS. THIS SUBCOMMITTEE WILL NOT CONTRIBUTE TO THEIR MISTREATMENT. ON THIS MATTER AND OTHERS, WE WILL WORK CLOSELY WITH OUR COLLEAGUES ON THE INDIAN AFFAIRS COMMITTEE.

IT IS ALSO DISAPPOINTING THAT THE TRUCKEE-CARSON IRRIGATION DISTRICT WAS UNABLE TO FIND WITHIN THE NEGOTIATIONS THAT PRODUCED THIS BILL A MEANS TO RESOLVE ITS CONCERNS REGARDING THE FUTURE OF THE NEWLANDS RECLAMATION PROJECT.

SENATOR REID AND I HAVE DISCUSSED THESE OUTSTANDING ISSUES, AND AGREE THAT THE SUBCOMMITTEE SHOULD PROVIDE THE FALLON TRIBE

AND TCID A REASONABLE AMOUNT OF TIME -- 90 DAYS -- DURING WHICH TO DEVELOP AND NEGOTIATE CONSTRUCTIVE, REALISTIC PROPOSALS FOR RESOLUTION OF THEIR CONCERNS IN A MANNER CONSISTENT WITH THE REST OF S. 1554.

DURING THE NEXT THREE MONTHS, WE WILL WORK WITH ALL PARTIES TO ACHIEVE THE MAXIMUM SCOPE OF CONSENSUS. BUT THE BENEFITS OF S. 1554 ARE TOO SUBSTANTIAL TO FOREGO THROUGH DELAY OR OBSTRUCTION.

I HAVE CERTAIN OTHER CONCERNS WITH THE BILL AND I WILL RAISE THESE COMPARATIVELY MINOR POINTS DURING THE COURSE OF THE HEARING.

I AM CONFIDENT THAT S. 1554 ULTIMATELY WILL WIN THE SUPPORT OF THE CONGRESS. THIS BILL CONTINUES A PATTERN OF LEGISLATION MARKING OUR COUNTRY'S EFFORTS TO COME TO GRIPS WITH AND RESOLVE THE ENVIRONMENTAL IMPACTS OF WESTERN WATER DEVELOPMENT.

ON THE COLUMBIA RIVER, THE 1980 NORTHWEST POWER PLANNING ACT IS BRINGING ABOUT THE RESTORATION AND ENHANCEMENT OF THAT BASIN'S FISH AND WILDLIFE -- RESOURCES WHICH HAD BEEN SO SERIOUSLY IMPACTED BY FEDERAL AND PRIVATE HYDROELECTRIC DEVELOPMENT.

ON THE UPPER COLORADO, EFFORTS ARE MOVING AHEAD TO PROTECT AND RESTORE ENDANGERED NATIVE FISH SPECIES.

IN NORTH DAKOTA, THE GARRISON DIVERSION PROJECT WAS RESTRUCTURED TO STRIKE A FAIR BALANCE BETWEEN IRRIGATION DEVELOPMENT AND WETLAND PROTECTION.

I BELIEVE THAT THE TREND MARKED BY S. 1554 AND THESE OTHER EXAMPLES SHOULD AND WILL BE EXPANDED TO OTHER REGIONS, TO OTHER VALLEYS, WHERE FEDERAL WATER DEVELOPMENT HAS CLAIMED AN UNREASONABLY AND UNNECESSARILY HIGH TOLL ON FISH, WILDLIFE, AND ENVIRONMENTAL QUALITY.

S. 1554 MARKS THE CONTINUATION OF A POSITIVE AND PROMISING TREND FOR THE WEST.

WITH THOSE THOUGHTS, LET US BEGIN THIS HEARING ON S. 1554, THE "TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT."

STATEMENT BY SENATOR ALAN CRANSTON
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON WATER AND POWER REGARDING S. 1554,
THE TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT
February 6, 1990

Mr. Chairman, I appreciate this opportunity to comment on S. 1554, legislation to implement water rights settlements involving the states of California and Nevada, the Pyramid Lake Paiute Tribe, and other parties with respect to the waters of the Truckee and Carson Rivers and the Lake Tahoe Basin.

The issues raised by this legislation are extremely important to the people of California. As you know, the Truckee and Carson Rivers have their headwaters in the Sierra Nevada mountains of California and flow into Nevada. Lake Tahoe straddles the two states. For over a hundred years, there has been uncertainty about the amount of water available from these sources for use in each state. There have been recurring disputes and litigation for decades.

California wants certainty and recognition of its current and reasonable future water needs. At the same time, the needs of California must be balanced with those of Nevada, the local jurisdictions, the Tribe, and environmental concerns.

As you know, numerous efforts have been made to provide an equitable apportionment of the waters of Lake Tahoe and the Truckee and Carson Rivers. **Most recently, California and Nevada negotiated an interstate compact which was ratified by the two state legislatures, but not ratified by Congress. I opposed the compact because it did not protect federal rights and** responsibilities to Indian tribes.

Now S. 1554 offers promising hope of achieving a settlement which has alluded us for so long, and achieving it this year.

S. 1554 addresses major issues -- the allocation of waters for the Truckee and Carson Rivers and Tahoe Basin, water supplies and recovery efforts for endangered and threatened species in the Truckee River and Pyramid Lake, water for vanishing wetlands, drought year protection for residents of Reno and Sparks, and settlement of litigation.

I want to commend my colleague from Nevada, Senator Reid, for his leadership on this issue, for promoting renewed negotiations among the various parties and introducing this bill which has provided the framework for additional discussions.

While there are still some outstanding issues to be negotiated, significant progress has been made to date, most recently on January 30 in Sacramento. It's my understanding that there now is agreement in principle on the basic amounts of water to be allocated to California.

The January 30 agreement provides for a 23,000 acre foot diversion for California in the Tahoe Basin. This allocation will ensure that water is available to permit development which is strictly controlled by the Tahoe Regional Planning Agency. I'm pleased to note the agreement also includes conditions to encourage water conservation and more efficient water use in the Tahoe Basin. Regarding the Truckee River Basin, the agreement provides for a 32,000 acre foot diversion, with surface water use limited to 10,000 acre feet a year. For the Carson River Basin, the agreement confirms California's allocation under the Alpine Decree, with some modifications.

However, there needs to be further discussion and negotiation of some conditions on these allocations, particularly related to the use of water in the Truckee River Basin. For example, California has concerns about a proposal regarding replacement water in the Truckee Basin if the Tahoe-Truckee Sanitation Agency changes its method of treatment and disposal of wastewater. This issue needs to be resolved in a way which does not inhibit the Tahoe-Truckee Santitation Agency's ability to adopt more environmentally beneficial practices. California also has objections to a suggestion that there be a federal prohibition on new use of Truckee River Basin water for agricultural irrigation in California. The state takes the position that beneficial uses of water should be determined by California law.

It's also my understanding that there is no agreement on the extent to which additional diversions of water for snow-making should be counted against California's Tahoe Basin allocation. Additionally, there are unresolved issues relating to water rights in the Carson River Basin which are not included in the Alpine Decree and to reclaimed wastewater use.

Finally, there is no agreement on interstate transfers of water and area of origin protection. It is important to California that the allocations under this legislative settlement indeed reserve amounts of water reasonably needed for present and future uses in areas of origin and for maintenance of the quality of the environment of these areas.

These issues need to be resolved before we move forward with S. 1554 and the bill amended to incorporate all agreements.

Additionally, as you know, S. 1554 provides that once enacted the portions of the legislation will not take effect until additional agreements are signed, including a new operating agreement for the Truckee River system and reservoirs. California's participation in the current negotiations has been based on the understanding that a new operating agreement would be negotiated. This provides an opportunity to improve operational efficiencies of the current system and protect fisheries and the environment while meeting downstream water rights.

It's critical that S. 1554 authorize negotiation of the operating agreement, but not include language which would foreclose consideration of reasonable options to achieve these goals. Additionally, it's essential to provide for California's participation in negotiations and approval of the agreement.

Mr. Chairman, I'm very encouraged by the significant progress that has been made to date. With a settlement we will be able to ensure water for the environmental and recreational needs of the Tahoe Basin and that visitors to Tahoe for generations to come will have enough water to enjoy this magnificent alpine resource. As a boy, I spent many summer vacations at Lake Tahoe. I've been back many times since, and never cease to marvel at its beauty. A settlement will also provide for the needs of California and Nevada communities, Pyramid Lake Paiute Tribe, endangered species and wetlands. I cannot overemphasize the importance of achieving these goals.

Mr. Chairman, I stand ready to work with the Committee and the sponsor of the bill in any way I can be help facilitiate a final agreement. Thank you.

TESTIMONY BY

THE HONORABLE PETE WILSON
UNITED STATES SENATOR (R-CA)

BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON WATER AND POWER

ON S. 1554

FEBRUARY 6, 1990 AT 9:30AM

DIRKSEN 366

Mr. Chairman, Senator Reid, Members of the Water and Power Committee: Thank you for the opportunity to testify today on the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. It is my belief that the hard work of many has brought us to the brink of reaching a thoughtful agreement on this issue.

Disputes over the use of waters shared by the States of California and Nevada have almost been of historic dimension. Early records reveal that the interstate controversies first arose as early as 1870. It was not until 1970 that the State Legislatures of California and Nevada adopted the California-Nevada Compact to allocate the waters of the Lake Tahoe, Truckee, Carson, and Walker River Basins. However, as you are aware the Compact could not become effective until Congress provided its consent and approval. Yet, the controversy surrounding the Compact made it impossible for the Senate to ratify it.

As is evidenced by the legislation before you today, due in large measure to the efforts of Senator Reid and his staff, the new decade has brought increased optimism and the spirit of cooperation between the states, federal government and Pyramid Lake Paiute Tribe. For the last two years, a series of negotiations has been pursued to settle outstanding disputes over the waters of the Truckee and Carson River systems, including the issue of interstate apportionment. Title I of S. 1554 is limited to points which there was general agreement in principle as of last summer. The measure has served as the basic framework for ongoing discussions.

I am proud that representatives from the States of California and Nevada reached agreement in December of 1989 on the interstate allocations. David Kennedy, the Director of the California Department of Water Resources, will be testifying later today on behalf of the Governor of California and providing you with an outline of California's specific needs. The January 30, 1990 negotiating session between the two states, the federal government and the Tribe gives even greater hope that we can end this hundred year stalemate. Mr. Chairman, I might add parenthetically that this consensus approach mirrors the efforts of water users, fishermen -- both commercial and sport -- as well as environmentalists who have joined forces in my bill (S. 1857) to restore the environmental resources of the Upper Sacramento River and its tributaries.

Mr. Chairman, one of the greatest challenges facing California and Nevada is how to deal with population growth within our respective States, while continuing to protect sensitive environmental resources. The pristine Tahoe Basin is one of California's most scenic areas; it is one of the State's most popular summer and winter recreation areas. During peak tourist seasons, visitors and seasonal residents in the Basin can increase the number of people in the area by 100 percent over the permanent population levels.

Growth in the Lake Tahoe Basin in California and Nevada is strictly regulated under the provisions of an interstate planning compact approved by Congress. Sufficient water should be allocated to this area to assure that the planning can be carried out; sensitive environmental planning, not water, should regulate growth in the area. Many of the regions within the California Tahoe Basin already have adopted and implemented important water conservation measures. Approved and periodically updated water conservation plans should become a necessary tool for managing water resources.

The Settlement Act must establish a criteria that oversees the transfer of water in a manner that allows the economy and the environment in the areas of use within California to flourish. Mr. Chairman, the primary benefit to the State of California from enactment of S. 1554 is equitable water apportionment. One of the major objectives of an equitable water apportionment is to provide sufficient water to meet California's present needs and reasonable future needs. This legislation should regulate interstate transfers from without undercutting the objective of this apportionment or jeopardizing the economic and environmental needs of California. This must be done carefully so as not to restrict reasonable and beneficial interstate water transfers. We must also protect the water needs of the areas of origin.

With regard to states rights, this legislation should not seek to mandate how the specified allocations can be used. Rather, it must secure equitable allocations reasonably suited to meet California's needs and leave it up to the State of California and its water users to place the water to beneficial use, within the framework of California law.

My final point on this legislation is that it has the potential to improve the efficiency of Truckee River operations. The bill would require that the parties involved develop an agreement to operate the river system, and that portions of the legislation would not take effect until an agreement is approved. I would have serious concerns about any such agreement, unless it is approved and signed by the State of California. Operation of the system should consider opportunities to enhance beneficial in-stream uses of water in California, including recreation, environmental and other purposes, while not adversely affecting downstream water rights. I support the broadest possible range of beneficial uses for the water available.

In closing, let me again acknowledge the leadership that my colleague from Nevada, Senator Reid, has demonstrated in bringing together the various entities and interests concerned with the outcome of the Settlement Act. But let me add that I would oppose any amendments to either this legislation or its House companion measure that would have adverse consequences on California's existing and future water needs. Yet, I would like to say that the legislation offers a solution to a problem that has troubled this region for many years. I am hopeful that the remaining differences on California's issues can be resolved expeditiously, and that the parties can move forward to the detailed work of preparing the operations agreements that will make these allocations possible.

101ST CONGRESS
1ST SESSION

S. 1554

To ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, JANUARY 3), 1989

Mr. REID introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act".

SEC. 2. FINDINGS AND UNDERSTANDINGS.

The Congress finds that this Act and associated agreements—

(1) further the goals of the Endangered Species Act as concerns species dependent upon water from the Truckee and Carson Rivers;

(2) are consistent with Federal goals to protect valuable national wetlands from further environmental degradation and protect the habitat of many species of wildlife dependent upon these wetlands;

(3) provide for settlement of outstanding claims against the Federal Government and State governments and help to end decades of litigation;

(4) provide for the equitable apportionment of the waters of Lake Tahoe and the Truckee and Carson Rivers to promote intergovernmental cooperation and comity between the States of California and Nevada and to provide certainty to the administration of their respective water rights law;

(5) help to reduce the effects of drought conditions on the citizens of western Nevada; and

(6) provide water for the citizens of California for their use within the Carson, Tahoe, and Truckee Basins.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Secretary" means the Secretary of the Interior;

(2) the term "Tribe" means the Pyramid Lake Paiute Tribe;

(3) the term "Preliminary Settlement Agreement" means the agreement signed by the Tribe and Sierra Pacific Power Company on May 23, 1989;

(4) the term "Operating Agreement" means the agreement described on page 24, paragraph (f) of the Preliminary Settlement Agreement;

(5) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(6) the term "Alpine Decree" means the final decree of the United States District Court for the District of Nevada in United States of America v. Alpine Land and Reservoir Company, Civil No. D-183, entered December 18, 1980, and any supplements thereto;

(7) the term "Orr Ditch Decree" means the decree of the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al.—in Equity, Docket No. A3;

(8) the term "Orr Ditch Court" means the court having continuous jurisdiction over the Orr Ditch Decree;

(9) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River and is incorporated in the Orr ditch decree;

(10) the term 'Pyramid Lake Fishery" means the two primary species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);

(11) the term "Lake Tahoe Basin" means the drainage area naturally tributary to Lake Tahoe, including the Lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East Mount Diablo Base and Meridian;

(12) the term "Truckee River Basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that Lake, but excluding the Lake Tahoe Basin;

(13) the term "Carson River Basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humbolt River drainage area;

(14) the term "Federal Water Master" means the individual appointed by the United States District Court of Nevada to carry out and enforce the provisions of the Orr Ditch Decree and the instructions and orders of the Court pertaining to the decree;

(15) the term "Truckee River General Electric Decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in United States of America v. Truckee River General Electric Co., No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S–643; and

(16) the term "Truckee River General Electric Court" means the Court having continuing jurisdiction over the Truckee River General Electric Decree.

TITLE I—INTERSTATE WATER APPORTIONMENT PROVISIONS

SEC. 101. THE CARSON RIVER.

(a) CONFIRMATION OF COURT ALLOCATION.—The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine Decree is confirmed.

(b) FURTHER ALLOCATIONS.—(1) In addition to the allocations referred to in subsection (a), the States of California and Nevada are further allocated sufficient water from the Carson River and its tributaries to serve beneficial uses which are not encompassed in the Alpine Decree and were initiated prior to the effective date of this Act. The total amount of water allocated by this subsection shall not exceed one thousand five hundred acres-feet per annum by depletion for use in California and two thousand one hundred and thirty-one acre-feet per annum by depletion for use in Nevada.

(2) RIGHT TO COMPENSATION FOR DISCONTINUANCE.—If all or any portion of the effluent imported from the Lake Tahoe Basin into the watershed of the Carson River in California on or after the effective date of this Act is discontinued by reason of the disposal of such effluent, including underground disposal, within the Truckee River Basin or the Lake Tahoe Basin, the allocation to California of the waters of the Carson River and its tributaries for use in Cali-

fornia shall be augmented by an amount of water which will compensate California for any such discontinuance: *Provided*, That any such augmentation shall be for use only on lands to which rights decreed by the Alpine Decree are appurtenant: *Provided further*, That nothing in this Act shall be construed to prohibit the continued use of all or any portion of such effluent on lands within California.

(c) APPLICATION OF STATE LAWS.—Nothing in this section shall preclude application of the laws of the States relating to abandonment or forfeiture of water rights for nonuse.

(d) VOLUNTARY INTERSTATE TRANSFERS.—The States of California and Nevada, the Tribe, and the Secretary may negotiate an agreement permitting the voluntary interstate transfer of water or water rights for use within the Carson River Basin. Any such agreement shall, prior to implementation, first be approved by the appropriate water right administration authority of each State pursuant to the State laws applicable to transfer of water or water rights.

(e) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA.—Nothing in this Act precludes the States of California and Nevada, the Tribe, and the Secretary from negotiating an agreement that permits the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the State of Nevada on the Carson River or its tributaries that result in inundation of lands in California: *Provided further,* That this agreement may—

(1) recognize and confirm the right to change the beneficial use of water from irrigation to storage for municipal and industrial and related uses: *Provided,* That such changes are in accordance with the Alpine Decree,

(2) permit water stored under this procedure to be diverted to storage in a given year and held for use in that or subsequent years, and

(3) confirm the historic practice for operation of reservoirs identified on pages 145 and 146 of the Alpine Decree to store, release, and use quantities of water determined by the capacity of the reservoirs and the yield of the tributary basins.

(f) Nothing in this section shall be construed as modifying or terminating any court decree or as affecting the applicability of State law and procedures to the water allocated hereunder.

SEC. 102. THE LAKE TAHOE BASIN.

(a) ANNUAL GROSS DIVERSION TOTALS.— The total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in the basin shall not exceed thirty-four thousand acre-feet annually, of which—

(1) twenty-three thousand acre-feet annually are allocated to the State of California for use within the Lake Tahoe Basin; and

(2) eleven thousand acre-feet annually are allocated to the State of Nevada for use within the Lake Tahoe Basin.

After use of the water allocated in this subsection such water may be exported from the Lake Tahoe Basin or reused.

(b) DETERMINATION OF GROSS DIVERSION.—The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement on the manner in which the gross diversion amounts under section (a) will be determined. The agreement shall include the following provisions:

(1) Water diverted and used to make snow shall not count against the gross diversion allocation of either California or Nevada unless and to the extent that the snow is produced for use outside the basin.

(2) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's or Nevada's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per annum.

(c) TRANSBASIN DIVERSIONS.—(1) The transbasin diversions from the Lake Tahoe Basin in Nevada and California identified in paragraph (2) below, may be continued, to the extent that such diversions are recognized as vested or permitted rights under the laws of the State where each diversion is made. Unless otherwise provided in this section, such diversions are in addition to the other allocations made by this section.

(2) The transbasin diversions referred to in paragraph (1) above are—

(A) the diversion of a maximum of three thousand acre-feet per annum from Marlette Lake for use in Nevada;

(B) the diversion of a maximum of five hundred and sixty-one acre-feet per annum from Lake Tahoe for use in Nevada, except that such diversion shall count against the allocation to Nevada made by this section;

(C) the diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) the diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

(3) The transbasin diversions identified in paragraph (2) may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or permitted. Water made available for use within the basin as a result of any such transfer shall not count against the allocations made by this section, and such water may be depleted.

(d) EFFECT OF ALLOCATION OF CERTAIN WATER.—(1) Water imported from any source outside the Lake Tahoe basin shall not count against the allocation made by this section but shall count against the allocation, if applicable, of the basin of origin.

(2) Water diverted or extracted in one State for use in the other shall count against the allocation under this section of the State in which the water is used.

SEC. 103. THE TRUCKEE RIVER.

The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement allocating the waters of the Truckee River basin between California, Nevada, and the Tribe. The allocation of water to California under this section shall not form the basis for additional claims of water from any water right holders by the Tribe under the Endangered Species Act.

SEC. 104. COMPLIANCE WITH INTERSTATE ALLOCATIONS.

The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement for administering the allocations made under this title.

SEC. 105. FORFEITURE OR ABANDONMENT NOT TO AFFECT ALLOCATIONS.

The forfeiture for nonuse or abandonment of water rights under the applicable law of each State shall not affect the allocations to each State made by this title.

TITLE II—TRUCKEE RIVER WATER SUPPLY MANAGEMENT

SEC. 201. IMPLEMENTATION OF WATER SUPPLY AGREEMENT.

(a) The Secretary shall enter into such contracts and take such actions as are required to carry out the terms and provisions of the Preliminary Settlement Agreement and the Operating Agreement, including, without limitation, contracts for the use of space in Truckee River Reservoirs for purposes of storing and exchanging water, *Provided,* That—

(1) California, Nevada, the Tribe, Sierra Pacific Power Company, and the United States have formally approved the Operating Agreement;

(2) the Orr Ditch Court and Truckee River General Electric Court have approved any proposed modifications in river operations, including storage and exchange of water, that would modify any provision in the Orr Ditch Decree or the Truckee River General

Electric Decree, except for those rights that are voluntarily relinquished by the parties to the Operating Agreement;

(3) all applicable dam safety and flood control requirements are met; and

(4) all storage and releases required to satisfy the rights set forth in the Orr Ditch Decree and the Truckee River General Electric decree are met.

SEC. 202. MODIFICATION OF TRUCKEE RIVER DIVERSION FACILITIES.

Such funds as may be required to permit the Secretary, in consultation with the State of Nevada and with the approval of affected water rights owners, to modify existing Truckee River diversion facilities and operations to the extent necessary to ensure that implementation of the Operating Agreement does not impair or diminish any water rights on the Truckee River, are hereby authorized.

TITLE III—WETLANDS PROTECTION

SEC. 301. AUTHORIZATION TO PURCHASE WATER RIGHTS.

(a) In General.—The Secretary is authorized to purchase water rights and water righted lands within the State of Nevada and to transfer, hold, resell, or otherwise dispose of such water rights and related interests to benefit Federal and State widlife areas in the Lahontan Valley and the Fernley Sink in Nevada in accordance with the provisions of this section.

(b) CONDITIONS.—The purchase of water rights and related interests pursuant to this Act shall be subject to the following conditions:

(1) Water rights purchased within the Newlands Irrigation Project must satisfy the eligibility criteria adopted by the Fish and Wildlife Service in connection with acquisition of water rights for the Stillwater National Wildlife Management Area pursuant to Public Law 100–446.

(2) Water rights shall be purchased from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program.

(3) All water rights purchased shall be transferred in accordance with State law.

(4) Water rights purchased shall be managed by the Secretary through the United States Fish and Wildlife Service in cooperation with the State.

(c) TRANSPORT.—The Secretary is authorized to—

(1) use existing water transport systems where available; and

(2) reimburse non-Federal entities, including but not limited to the Truckee-Carson Irrigation District,

for full operation and maintenance charges in carrying out the provisions of this section.

(d) CONSTRUCTION OF THE SECTION.—The Federal water purchase program authorized in this section is specific to this section and shall not be construed as a precedent in determining Federal responsibilities toward wildlife areas.

(e) AUTHORIZATION.—There are hereby authorized to be appropriated to carry out the provisions of this section $4,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994.

SEC. 302. STUDY OF NATIONAL WILDLIFE REFUGE CREATION.

Within two years of the date of passage of this Act, the Secretary shall provide the Congress with recommendations concerning the transfer of certain United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for establishment of the permanent National Wildlife Refuge and Wildlife Management Area to be managed for fish and wildlife purposes in cooperation with the signatories of the 1948 Tripartite Agreement.

TITLE IV—CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM

SEC. 401. TRANSFER OF FALLON NAVAL AIR STATION'S WATER RIGHTS.

(a) ALTERNATIVE AGRICULTURAL OUTLEASE PROGRAM.—Not later than one year after the effective date of this Act, the Secretary of the Navy, in consultation with and with the assistance of the Secretary, shall develop and implement an alternative program for the lands owned by the United States within the Naval Air Station at Fallon, Nevada to replace the agricultural outlease program. The alternative program shall satisfy the Navy's dust abatement and fire safety requirements in the most water efficient manner. The water rights appurtenant to those lands which are not needed for dust abatement and fire safety requirements shall be transferred to the Pyramid Lake Indian Reservation for fishery purposes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such funds as are necessary to develop and implement the alternative program for the Naval Air Station at Fallon, Nevada described in subsection (a).

(b) REIMBURSEMENT OF COSTS.—The Secretary shall reimburse the Truckee-Carson Irrigation District for the full operation and maintenance charges associated with the water rights transferred pursuant to this section.

SEC. 402. RECOVERY PLANS.

(a) IN GENERAL.—Pursuant to section 4(f) of the Endangered Species Act (16 U.S.C. 1533(f)), the Secretary through the United States Fish and Wildlife Service shall revise and update plans for the recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed not later than one year after the date of enactment of this Act. If implementation has not begun within six months following the completion of the recovery plan and Congress has not acted to the contrary, the Secretary shall proceed to implement such plans.

(b) CRITERIA FOR DEVELOPING PLANS.—In developing the recovery plans pursuant to subsection (a), the Secretary shall—

(1) take account of and include the transfer of the water rights of the Naval Air Station at Fallon, Nevada described in section 401(a);

(2) take account of, including, and make the plans subject to and consistent with the provisions of the interstate allocation described in title I, any additional agreements authorized under title I, and the Preliminary Settlement and Operating Agreements authorized under title II of this Act;

(3) consider water quality needs in the lower Truckee River and Pyramid Lake;

(4) consider possible habitat improvements in the lower Truckee River;

(5) consider possible access improvements to the mouth of the Truckee River;

(6) establish a schedule which is designed to achieve implementation of a recovery plan for the cui-ui in the Truckee River/Pyramid Lake ecosystem;

(7) establish a schedule which is designed to achieve implementation of a recovery plan for the Lahontan Cutthroat trout;

(8) consider measures to increase the number and size of juvenile Lahontan cutthroat trout recruited to Pyramid Lake through natural reproduction where possible, or through construction or expansion of hatcheries and related facilities; and

(9) consider other actions consistent with the allocations described in sections 101, 102, and 103 of this Act and the Operating Agreement described in section 201 of this Act that might enhance recovery of the endangered and threatened species.

TITLE V—PYRAMID LAKE DEVELOPMENT FUND

SEC 501. PYRAMID LAKE FUND.

(a) There is hereby established with the Treasury of the United States the "Pyramid Lake Paiute Tribal Development Fund".

(b) There is authorized to be appropriated to the Pyramid Lake Paiute Tribal Development Fund $75,000,000 together with interest accruing from the effective date of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on the outstanding Federal obligations of comparable maturity. Following execution of the settlement agreements, judgments, and other appropriate final dispositions specified in section 603, the Secretary of the Treasury shall allocate and make available such moneys from the trust fund as are requested by the Tribe. Any moneys not allocated to the Tribe and remaining in the fund authorized by this section shall be invested by the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 162a). The Secretary of the Treasury shall allocate and make available such interest from the trust fund as is requested by the Tribe.

(c) All of the Funds appropriated pursuant to this section shall be invested or used for economic development.

(d) Notwithstanding any provision of law, the Tribe shall have complete discretion to invest and manage the funds appropriated pursuant to this section provided that the United States shall not bear any obligation or liability regarding the investment, management or use of such funds that the Tribe elects to invest, manage or use.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. CLAIMS SETTLEMENT.

(a) This Act is contingent upon settlement of the following outstanding litigation as indicated—

(1) Pyramid Lake Paiute Tribe v. California, civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California, to be dismissed with prejudice;

(2) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed amended complaint, water issues to be dismissed;

(3) Pyramid Lake Paiute Tribe v. Lujan, Civil S-87-1281-LKK, United States District Court, Eastern District of California, to be dismissed;

(4) all claims presented in Pyramid Lake Paiute Indian Tribe v. Department of the Navy, Civil No. R-86-155 BRT in the United States District Court

for the District of Nevada and Docket No. 88–1650 in the United States Court of Appeals for the Ninth Circuit, to be dismissed; and

(5) the withdrawal of all pending motions filed by the Tribe in Docket No. E–9530 before the Federal Energy Regulatory Commission.

(b) The signatories under section 201 shall negotiate an agreement to insure that the matters settled by this Act and its associated agreements will not be subject to litigation subsequent to the effective date of this Act.

(c) On request by and in accordance with a resolution of the Business Council of the Fallon Paiute-Shoshone Tribe, the Secretary shall negotiate diligently with the Business Council: (1) to establish a program for full and prompt implementation of the provisions of Public Law 95–337 and/or alternatives thereto that are acceptable to the Fallon Tribe; and (2) to settle any outstanding claims arising from breaches of the 1906 Agreement between the Fallon Tribe and the United States, Public Law 95–337, and the Federal trust responsibility to the Fallon Tribe. Such negotiations shall commence within sixty days of the date of the Business Council resolution and shall conclude within twelve months thereafter, unless the Business Council by resolution requests an extension of the negotiations. To enable the Fallon Tribe to fully protect its interests in such negotiations, the Secretary shall provide adequate funding for technical and legal assistance under his existing authorities and programs. Neither the provisions of this Act nor the occurrence of negotiations under this section shall: release or modify any obligations or liabilities of the United States under the 1906 Agreement, Public Law 95–337, or the Federal trust responsibility; or modify, extinguish, or otherwise affect any water rights appurtenant to lands within the Fallon Indian Reservation.

SEC. 602. GENERAL PROVISIONS.

(a) All of the trust land within the Pyramid Lake Indian Reservation shall be permanently held by the United States in Trust for the sole use and benefit of the Tribe.

(b) The Tribe shall have sole and exclusive right to regulate all hunting and fishing on all lands, including the bed and banks of the Truckee River and Pyramid Lake, within the boundaries of the Pyramid Lake Indian Reservation.

(c) Nothing in this Act shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe.

(d) The United States confirms and ratifies certain waivers by the Tribe of the right to object to the implementation of the water supply measures described in sections 3 and 21 of the Preliminary Settlement Agreement.

(e) The Secretary, the Tribe, and the State of Nevada shall negotiate an agreement determining permanent rights to store water for the benefit of the Tribe and the Pyramid Lake Fishery in Stampede and Prosser Reservoirs.

(f) Nothing in title II of this Act, or in agreements made pursuant to it, may affect any recognized and perfected right of any other party or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands project for delivery of the water of the Truckee River to Derby Dam and for diversion of such water at Derby Dam pursuant to the Orr Ditch Decree or any applicable regulations approved by a court of competent jurisdiction: *Provided further*, That the Orr Ditch Court and the Water Master, pursuant to the administrative provisions of the Orr Ditch Decree, including the Truckee River Agreement, incorporated and made part thereof, may ensure that all water rights of the Truckee River are not impaired or diminished by this Act or any agreements made pursuant to this Act, except with respect to the interstate allocation of water to California or the Tahoe Basin: *Provided further*, That nothing in title II of this Act or any agreements made pursuant it will abrogate the jurisdiction or required approvals of the State engineer.

SEC. 603. EFFECTIVE DATE.

The provisions of titles II, V, and VI, and section 401 of title IV of this Act shall not take effect until the agreements required under title II are in effect, the funds authorized under title V have been appropriated, the outstanding claims described in section 601(a) have been dismissed, the Orr Ditch Court and the Truckee River General Electric Court have approved any provisions in the Preliminary Settlement Agreement and the Operating Agreement described in section 201 which affect the Orr Ditch Decree, and the Secretary, the State of Nevada, the Tribe, the Sierra Pacific Power Company, and the Cities of Reno and Sparks enter into an agreement certifying that all necessary preconditions for the settlement have been satisfied and provide for the implementation of the settlement.

Senator **Bradley**. Our witness list, as I said, is long today, and to begin we have an outstanding panel of Nevada and California Representatives in Congress. And our leadoff witness is Senator Harry Reid, who is the father of this legislation. He will be followed by Senator Bryan, who is a strong supporter of the legislation. And then Mr. Norman Shumway of the House, and Barbara Vucanovich of the House of Representatives.

Senator Reid.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Senator **Reid**. Thank you, Mr. Chairman. I want to begin by expressing my sincere appreciation to you and to your staff for the work that has gone into the arriving at the point where we can have this hearing today.

I would also like to express my appreciation to my colleague Senator Bryan, Barbara Vucanovich and also Norm Shumway, who about half the time we claim is a member of the Nevada delegation. He is the representative on the border, so to speak.

Mr. Chairman, this legislation is a product of 3 years of negotiations involving the Federal Government, the United States, the States of Nevada, California and the Pyramid Lake Paiute Tribe and other major water users in western Nevada. The purpose of this legislation is to solve as many of the water problems affecting this fragile ecosystem as is possible.

The bill will equitably allocate waters of the Carson River, Truckee River and Lake Tahoe between Nevada, California and the Pyramid Lake Paiute Tribe. It will implement water supply agreements. It will provide 40 years of drought protection for the western Nevada cities of Reno and Sparks. It will improve water supplies and enhance recovery efforts forthe endangered and threatened species in the Truckee River and Pyramid Lake. It will provide fresh water for disappearing but valuable wetlands in Lahontan Valley in Nevada, and it will settle outstanding claims by various parties against the Federal Government and State governments, thus terminating 80 years of turmoil and decades of litigation. The agreements contained in this legislation are the product of thousands of hours of negotiations spanning the last 3 years, and represent an effort to solve water wars that have been raging in western Nevada since the turn of the century.

Mr. Chairman, prior to 1902 the mighty but small Truckee River cascaded out of Lake Tahoe and ended its natural terminus at Pyramid Lake. Pyramid Lake also occasionally overflowed, forming shallow Lake Winnemucca and its associated wetlands, which were the home of millions of waterfowl. Likewise, the Carson River flowed from its origins in the Sierra Nevada and terminated in the Carson Sink.

Then in 1902 came the Newlands project, named after Congressman Francis Newlands, son-in-law of one of the original owners of the Comstock. This project, the first ever of the Bureau of Reclamation, altered radically the basic structure of these two river systems. The change came with the construction of a canal which diverted water from the Truckee River to a reservoir called Lahontan, which had originally been constructed to store the waters of the Carson River for use in agricultural irrigation in the Lahontan Valley.

By drastically reducing the flows of the lower Truckee River, this diversion resulted in Lake Winnemucca and its wetlands disappearing from the face of the earth.

Also, the level of Pyramid Lake dropped by 70 feet in less than 40 years, making it impossible for natural spawning runs of the cui-ui and Lahontan cutthroat trout to take place in the Truckee River. This nearly destroyed these two species of fish indigenous to Pyramid Lake.

Because the Newlands project, which benefits from the diversion of water from the Truckee, was a Federal project, the United States has been intimately involved in the battle over Truckee River waters for many years. As growth naturally came to the fragile high desert of the Reno area, the Truckee's problem spread to include many other water users on the river.

In the late 1960s Stampede reservoir was constructed by the Federal Government to supply water for Reno and Sparks and other upstream users. However, almost simultaneously with the construction of Stampede, the Federal courts ordered that under the Endangered Species Act all water from Stampede must be used to benefit the endangered species in the Truckee River. Because the remainder of the available storage space in the Truckee system is already fully utilized, Reno and Sparks are without adequate drought protection for their water supply.

Mr. Chairman, as we speak, Reno and Sparks are currently in the middle of a major drought, as of course are many other areas of Western Nevada. Mr. Chairman, droughts are a common occurrence in the Western United States. In recent years, the Federal courts have ordered the Interior Department to develop operational plans for the Newlands project that have significantly reduced the amount of water diverted from the Truckee River.

The unintended result of this plan has been to almost destroy the Stillwater Wildlife Refuge. Stillwater, one of the most important links in the Pacific Flyway and part of the national shorebird refuge system, has shrunk from over 50,000 acres of wetlands to scarcely 3,000 acres.

It was against this background of turmoil, agitation, confusion and discord that I began work on S. 1554. Of primary interest was the ability to negotiate an agreement allocating the water of the Carson River, Lake Tahoe and Truckee River basins between California and Nevada. Efforts to accomplish this date back to the 1880s. Most recently, California and Nevada negotiated an interstate compact, which was ratified by their respective State legislatures in 1969.

However, this compact was never ratified by Congress. The participants in these negotiations reached back to many of the provisions of the compact and tried to build on foundations originated in the compact.

Mr. Chairman, I am happy to report that a week ago today an agreement was reached in Sacramento on the major allocations to California from the three basins. The agreement sets an annual 32,000 acre-foot diversion from California from the Truckee, with a set of conditions for that diversion, a 23,000 acre-foot diversion in

Lake Tahoe basin and confirms the California allocations under the Supreme Court's Alpine Decree in the Carson River with some minor modifications. We expect to be able to supply final language to the Committee on the interstate agreement in the very, very near future.

Two other major goals we had were to assist the endangered species in the Truckee River and the wildlife at Stillwater. We have included language in the bill directing that improvements be made to the lower Truckee River that improve the chances of successful spawning runs, that provide some additional water supplies, and that directs the Fish and Wildlife Service to complete and implement a recovery program for the species in accordance with the Endangered Species Act. S. 1554 also proposes to establish a Federal water purchase program to benefit the wildlife at Stillwater.

The Director of the Nevada Department of Wildlife stated during a hearing I conducted on Stillwater that "losing these wetlands would be the greatest natural resource disaster in Nevada in this century." To avoid this, we propose a four-year, $16 million program to purchase agricultural water from willing sellers for the benefit of the wetlands. Nevada has also authorized a State bond program to provide up to $10 million for additional purchases. While these efforts won't return Stillwater to its former stature, it will be enough to maintain a viable refuge and save nature's original lake between Canada and the southern areas of the great North American Flyway.

One of the key elements to a successful solution to the water problems was to provide some drought year protection for the people living in Reno and Sparks. This turned out to be the most creative part of the settlement. It was discovered that 80 years of court decrees had imposed a totally rigid and inflexible operating structure on the Truckee River that was also very inefficient. The discovery was also made that if we put some efficiency back into the river's operation we could improve conditions for the cui-ui while establishing a drought reserve for the municipalities. This would be accomplished by making better use of the river's available storage facilities through the exchange of credit waters for both municipal and fishery use, and also more timely release of river flows.

Importantly, Mr. Chairman, these changes will be made without impairing any water right holder's ability to get the water to which they are entitled.

One of the other benefits of this legislation is that it will settle several outstanding claims that are currently in litigation and will result in an agreement by the parties prohibiting new litigation on the issues solved by this agreement. Mr. Chairman, one of the lawsuits over these water problems took more than 50 years to decide.

In connection with claims settlements, I also want to mention that I strongly support a fair settlement of the outstanding claims related to Public Law 95-337 against the Federal Government by the Fallon Paiute-Shoshone Tribe. I hope that such a settlement can be made in time to make it part of this legislation.

Mr. Chairman, we have accomplished much over the last three years, but it is going to take Congress to make these accomplishments a reality. I think that most of the testimony you will hear today will echo my request for your support of our efforts. However, you will also probably hear that S. 1554 is too complicated and that it doesn't settle all the outstanding problems.

To answer the first point I only want to say that the bill is as simple as it can be and still provide realistic solutions to the very complicated problems we face on these river systems. Remember, the problems have come about through 80 years of fighting over dozens of lawsuits in the courts. This has created complexity. The final solution must solve these real problems.

This bill does not settle the outstanding differences between the Newlands project and Pyramid Lake Tribe. That was one of our original goals and we spent seven months negotiating on this issue alone. Ultimately both sides, the Pyramid Lake Tribe and the managers of the Newlands project, informed us they couldn't find a basis for settling their differences and that they would rely on the Federal courts to set the operational criteria for the project. I stated that I thought that was a mistake at the time, and I still think it is a mistake.

However, at no point in these negotiations have I ever tried to impose a solution on any of the parties involved. To be effective I believe that the solutions must come through negotiations. Therefore, we reluctantly dropped the Newlands related issues from the negotiations and provided them with assurances in the bill that nothing would negatively impact water holders and the Newlands project ability to get the water due them.

Remember, Mr. Chairman, the problems of the irrigation district long predate this legislation. Their problems are complex and difficult, but this bill does not add to them. I have offered to continue to work with them to solve their problems. If they can come to an agreement with the Pyramid Lake Tribe and the Federal Government, I will do what I can to make the agreement a reality.

However, I cannot accept the argument that S. 1554 is fatally flawed because it doesn't settle the problems between the Pyramid Tribe and the Newlands project water holders.

Laotzu was the first to teach that a journey of 1,000 miles must begin with a single step. A half a world away and more than two millennia later, we can be sure that at least this one fact remains unaltered. Progress still comes in steps. This bill is a big step and deserves congressional support. I hope that the members of this Committee agree with me.

Thank you, Mr. Chairman.

Senator BRADLEY. Thank you very much, Senator Reid, for your testimony. It is quite comprehensive, and helps the subcommittee understand how you arrived at this bill.

[The prepared statement of Senator Reid follows:]

Mr. Chairman. I want to begin by expressing my sincere appreciation to you for holding this hearing today on S. 1554, the Truckee-Carson-Pyramid Lake Water Settlement Act.

This legislation is the product of three years of negotiations involving the federal government of the United States, the States of Nevada and California, the Pyramid Lake Paiute Tribe, and other major water users in western Nevada. The purpose of this legislation is to solve as many of the water problems affecting this fragile ecosystem as is possible.

The bill will --

-- equitably allocate waters of the Carson River, Truckee River, and Lake Tahoe, between Nevada, California, and the Pyramid Lake Paiute Tribe;

-- implement water supply agreements that will provide forty years of drought protection for the western Nevada cities of Reno and Sparks;

-- improve water supplies and enhance recovery efforts for endangered and threatened species in the Truckee River and Pyramid Lake;

-- provide fresh water for disappearing but valuable wetlands in the Lahontan Valley in Nevada, and

-- settle outstanding claims by various parties against the federal government and state governments thus terminating eighty years of turmoil and decades of litigation.

The agreements contained in this legislation are the product of thousands of hours of negotiations spanning the last three years, and represent an effort to solve water wars that have been raging in western Nevada since the turn of the century.

Mr. Chairman, prior to 1902, the mighty but small Truckee River cascaded out of Lake Tahoe and ended in its natural terminus at Pyramid Lake. Pyramid Lake also occasionally overflowed, forming shallow Lake Winnemucca and its associated wetlands which were home to millions of waterfowl. Likewise, the Carson River flowed from its origins in the Sierra Nevadas and terminated in the Carson Sink.

Then in 1902 came the Newlands project, named after Senator Francis Griffith Newlands, son-in-law of one of the original owners of the Comstock. This project, the first ever of the Bureau of Reclamation, altered radically the basic structure of these two river systems. The change came with the construction of a canal which diverted water from the Truckee River to reservoir called "Lahontan" which had originally been constructed to store the waters of the Carson River for use in agricultural irrigation in the Lahontan Valley. By drastically reducing the flows of the lower Truckee River, this diversion resulted in Lake Winnemucca and its wetlands disappearing from the face of the face of the earth. Also, the level of Pyramid Lake dropped by 70 feet in just four decades, making it impossible for natural spawning runs of the cui ui and Lahontan Cutthroat trout to take place in the Truckee River. This nearly destroyed these two species of fish indigenous to Pyramid Lake. Because the Newlands Project -- which benefits from the diversion of water from the Truckee -- was a federal project, the United States has been intimately involved in the battle over Truckee River waters for many years.

As growth naturally came to the fragile high desert of the Reno area, the Truckee's problem spread to include many other water users on the river. In the late 1960s, Stampede Reservoir was constructed by the federal government to supply water for Reno and Sparks and other upstream users. However, almost simultaneously with the construction of Stampede, the federal courts ordered that under the Endangered Species Act all water from Stampede must be used to benefit the endangered species in the Truckee River. Because the remainder of the available storage space on the Truckee system is already fully utilized, Reno and Sparks are without adequate drought protection for their water supply. As we speak, Reno/Sparks is currently in the middle of a major drought, as, of course, are many other areas of western Nevada. Droughts are a common occurrence in the western United States.

In recent years, the federal courts have ordered the Interior Department to develop operational plans for the Newlands Project that have significantly reduced the amount of water diverted from the Truckee River. The unintended result of this plan has been to nearly destroy the Stillwater Wildlife Refuge. Stillwater, one of the most important links in the Pacific Flyway and part of the National Shorebird Refuge system, has shrunk from over 50,000 acres of wetlands to scarcely 4,000 acres.

It was against this background of turmoil, agitation, confusion, and discord that I began work on S. 1554.

Of primary interest was the ability to negotiate an agreement allocating the waters of the Carson River, Lake Tahoe, and Truckee River basins between California and Nevada. Efforts to accomplish this date back to the 1880s. Most recently, California and Nevada negotiated an interstate compact which was ratified by the respective state legislatures in 1969. However, this compact was never ratified by Congress. The participants in these negotiations reached back to many of the provisions of the compact and tried to build on foundations originated in the compact. I am happy to report that a week ago today an agreement was reached in Sacramento on the major allocations to California from the three basins. The agreement sets an annual 32,000 acre foot diversion for California from the Truckee with a set of conditions for that diversion; a 23,000 acre foot diversion in the Lake Tahoe basin, and confirms the California allocations under the Supreme Court's Alpine Decree in the Carson River, with some minor modifications. We expect to be able to supply final language to the Committee on the interstate agreement in the very near future.

Two other major goals we had were to assist the endangered species in the Truckee River and the wildlife at Stillwater. We have included language in the bill directing that improvements be made to the lower Truckee River that improve the chances of successful spawning runs, that provide some additional water supplies, and that directs the Fish and Wildlife Service to complete and implement a recovery program for the species in accordance with the Endangered Species Act.

S. 1554 also proposes to establish a federal water purchase program to benefit the Wildlife at Stillwater. The Director of the Nevada Department of Wildlife stated during a hearing I conducted on Stillwater that, "losing these wetlands would be the greatest natural resource disaster in Nevada in this century." To avoid this we propose a four-year, $16 million program to purchase agricultural water from willing sellers for the benefit of the wetlands. Nevada has also authorized a state bond program to provide up to $10 million for additional purchases. While these efforts won't return Stillwater to its former stature, it will be enough to maintain a viable refuge, and save nature's original like between Canada and southern areas on the great North American flyway.

One of the key elements to a successful solution to the water problems was to provide some drought year protection for the people living in Reno and Sparks. This turned out to be the most creative part of the settlement. It was discovered that 80 years of court decrees had imposed a totally rigid and inflexible operating structure on the Truckee River that was also very inefficient. The discovery was also made that if we put some efficiency back into the river's operation, we could improve conditions for the cui ui while establishing a drought reserve for the municipalities. This would be accomplished by making better use of the river's available storage facilities through the exchange of credit waters for both municipal and fishery use and also more timely release of river flows. Importantly, these changes will be made without impairing any water right holder's ability to get the water that they are entitled.

One of the other benefits of this legislation is that it will settle several outstanding claims that are currently in litigation, and will result in a agreement by the parties prohibiting new litigation on the issues solved by this settlement. Mr. Chairman, one of the law suits over these water problems took more than 50 years decide.

In connection with claims settlements, I also want to mention that I strongly support a fair settlement of the outstanding claims related to Public Law 95-337 against the federal government by the Fallon Paiute-Shoshone Tribe. I hope that such a settlement can be arrived at in time to make it part of this legislation.

Mr. Chairman, we have accomplished much over the last three years. But, it is going to take Congress to make these accomplishments a reality. I think that most of the testimony you will hear today will echo my request for your support of our efforts. However, you may also hear that S. 1554 is too complicated and that it doesn't settle all of the outstanding problems. To answer the first point, I only want to say that the bill is as simple as it can be and still provide realistic solutions to the very complicated problems we face on these river systems. Remember, the problems have come about through 80 years of fighting over dozens of lawsuits in the Courts. This has created complexity. The final solution must solve these real problems.

This bill does not settle the outstanding differences between the Newlands Project and Pyramid Lake. That was one of our original goals, and we spent over seven months negotiating on this issue. Ultimately, both sides, the Pyramid Lake Tribe and the managers for the Newlands Project, informed us that they couldn't find a basis for settling their differences and that they would rely on the federal courts to set the operational criteria for the Project. I stated that I thought that was a mistake at the time, and I still think it is a mistake. However, at no point in these negotiations have I ever tried to impose a solution on any of the parties involved. To be effective, I believe that solutions must come through negotiations. Therefore, we reluctantly dropped the Newlands related issues from the negotiations and provided them with assurances in the bill that nothing would negatively impact water holders in the Newlands Project ability to get the water due them. Remember Mr.

President, the problems of the irrigation district long predate this legislation. Their problems are complex and difficult, but this bill does not add to them. I have offered to continue to work with them to solve their problems. If they can come to agreement with the Pyramid Lake Tribe and the federal government, I will do what I can to make agreement a reality.

However, I cannot accept the argument that S. 1554 is fatally flawed because it doesn't settle the problems between the Pyramid Lake Tribe and the Newlands Project water holders. Lao-tzu was the first to teach that, "A journey of a thousand miles must begin with a single step." A half a world away and more than two millennia later, we can be sure that at least this one fact remains unaltered: progress still comes in steps. This bill is a big step and deserves congressional support. I hope that the members of this Committee agree with me.

Senator **Bradley**. Senator Bryan.

STATEMENT OF HON. RICHARD H. BRYAN, U.S. SENATOR FROM NEVADA

Senator **Bryan**. Thank you very much, Mr. Chairman. It is my pleasure to provide comments on S. 1554, introduced by my senior colleague, Senator Reid.

The history of the West is closely intertwined with the history of its water resources. The inland western region, although blessed with many natural resources, contains arid expanses where water is indeed the most precious of commodities. Over the years as the West has grown, the conflicting demands for limited water have caused much controversy. Nevada, the driest of the states, continues also to be one of the fastest growing, which further imposes strains on our limited resources.

I commend Senator Reid and his staff for the more than two years of intense effort and negotiation that has resulted in the legislation before this subcommittee today. The issues involved are complicated and, as the Senator just pointed out, efforts to resolve them date back to the turn of the century. A comprehensive resolution of these issues involves balancing the interests of two states, a number of local jurisdictions, tribal governments and environmental concerns. Without Senator Reid's leadership, efforts to allocate the water resources available to northern Nevada would be even further removed from a potential legislative solution.

It is my belief that certain fundamental principles should be incorporated into any legislative resolution of the sensitive policy issues involved in allocating water in northern Nevada. Foremost among these is the resolution of the interstate water allocation between California and Nevada.

Largely through the efforts of dedicated state officials such as Roland Westergard, Director of the Department of Conservation and Natural Resources in Nevada, and David Kennedy, the Director of the California Department of Resources, the long negotiations between our two states has been consummated. The final allocation between Nevada and California of the waters of the Truckee River, the Carson River and its tributaries and the waters of Lake Tahoe is a historic achievement.

A second critical issue is the protection of our vanishing wetlands. In 1983, through legislative action that I had occasion to approve as Nevada's governor, $8 million were made available which the State will contribute to the wetlands preservation effort. The Stillwater Wildlife Refuge, a part of the Pacific Flyway migratory path, is a national resource, and it is only fair that the Federal Government also should participate in its preservation, as is provided in the legislation.

In relation to outstanding litigation, any final settlement of claims in a fashion that may prevent or preclude future litigation is also an essential element which is included in the proposed settlement.

The final area of sensitive concerns that must be addressed are the distribution issues: the provision of drought year water supplies for the Truckee Meadows area, division of water resources between the lower Carson River Valley and Pyramid Lake and water flows that adequately protect the wetlands in the Lahontan Valley, and provide for recreational opportunities at the Lahontan Reservoir.

There will be, as you have been informed, Mr. Chairman, several amendments that will be offered to the legislation. I urge you and the subcommittee to carefully consider the implications of those proposed amendments.

The legislation before you provides a framework within which the complicated technical issues necessary to develop available conservation plan and an operating agreement may be addressed and resolved. It is my belief that it as a result of today's hearing and the consideration by this subcommittee of the testimony of the various witnesses, a bill which adequately and equitably addresses the divergent interests represented here can be successfully resolved and acted upon by the Senate.

The investment of time and interest by many citizens and entities who participated in these negotiations will pay a dividend of great value to the citizens of northern Nevada and our environment.

And, Mr. Chairman, I would add that we appreciate very much the time of yourself, the subcommittee and your very capable staff, and I thank you.

[The prepared statement of Senator Bryan follows:]

TESTIMONY OF SENATOR RICHARD H. BRYAN BEFORE THE SUBCOMMITTEE ON WATER AND POWER REGARDING S.1554, THE

TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT

February 6, 1990

Mr. Chairman and Members of the Committee, it is my pleasure to provide comments on S.1554, introduced by my senior colleague, Senator Reid.

The history of the West is closely intertwined with the history of its water resources. The inland western region, although blessed with many natural resources, contains arid expanses where water is, indeed, the most precious commodity. Over the years, as the West has grown, the conflicting demands for limited water have caused much controversy. Nevada, one of the driest states in the nation, continues also to be one of the fastest growing, which further strains our resources.

I commend Senator Reid and his staff for the more than two years of intense effort and negotiation that has resulted in the legislation before the Committee today. The issues involved are complicated, and efforts to resolve them date back to the early years of this century. A comprehensive resolution of these issues involves balancing the interests of two states, a number of local jurisdictions, tribal governments, and environmental concerns. Without Senator Reid's leadership, efforts to allocate the water resources available to northern Nevada would be even further removed from any potential legislative resolution.

It is my belief that certain fundamental principles should be incorporated into the legislative resolution of the sensitive public policy issues involved in allocating water in northern Nevada.

Foremost among these is the resolution of the interstate water allocation between California and Nevada. Largely through the efforts of dedicated State officials such as Roland Westergard, Director of the Nevada Department of Conservation and Natural Resources and David Kennedy, Director of the California Department of Water Resources, the long negotiation between the states has been consummated. The final allocation between Nevada and California of the waters of the Truckee River, the Carson River and its tributaries, and the waters of the Lake Tahoe basin is an historic achievement.

A second critical issue is protection of our vanishing wetlands. In 1983, through legislative action that I approved as Nevada's Governor, $8 million dollars were made available which the state will contribute to the wetlands preservation effort. The Stillwater Wildlife Refuge, a part of the "Pacific Flyway" migratory path is a national resource, and it is only fair that the federal government also should participate in its preservation as is provided in this legislation.

Resolution of outstanding litigation and the final settlement of claims in a fashion that may prevent or preclude future litigation is also an essential element within the proposed settlement.

The final area of sensitive concerns that must be addressed are distribution issues: the provision of drought year water supplies for the Truckee Meadows area, division of water resources between the Lower Carson River Valley and Pyramid Lake, and water flows adequate to protect the wetlands in the Lahontan Valley and provide recreation at Lahonton Reservoir.

The legislation before you provides a framework within which the complicated technical issues necessary to develop a viable conservation plan and an operating agreement may be addressed and resolved.

It is my belief that as a result of today's hearing and the consideration by this Committee of the testimony of the various witnesses, a bill which adequately and equitably addresses the divergent interests involved can be acted upon by the Senate this year.

The investment of time and interest by this Committee and the many citizens and entities who participated in these negotiations will pay a dividend of great value to the citizens and environment of northern Nevada.

Senator **Bradley**. Thank you very much, Senator Bryan. Congressman Shumway.

STATEMENT OF HON. NORMAN D. SHUMWAY, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. **Shumway**. Thank you, Mr. Chairman. I appreciate the opportunity to speak briefly to the subcommittee regarding S. 1554. I represent the California side of the Lake Tahoe basin, and the water which is the subject of this water rights settlement bill originates in my district, and for that reason, I have a very real interest in the progress of this legislation and the eventual settlement of the disputes.

I would like to join in expressing admiration for Senator Reid, who has taken this issue in an effort to resolve it meaningful way. It has been around for a long, long time. I met with Senator Reid last fall; he asked for my support. I pledged to him at that time that I would be very happy to work with him toward resolving these issues and pushing a bill such as this through the Congress.

Even though I have some hesitation about S. 1554, I still believe that we are taking a very important step here, and I think there is a great deal that we can feel satisfied about regarding the negotiations that have gone on before.

With regard to the Lake Tahoe allocation, I believe that allocation, as it has now been agreed upon at 23,000 acre-feet per year for California and 11,000 acre-feet per year for Nevada, is indeed acceptable. Those figures have been the historic figures, have been administered by the Tahoe Regional Planning Agency, and now they will be the subject of this agreement.

I also agree that these allocations should be measured as the cumulative sum of all meters in a fully metered system, and at the point of diversion for a system which is not fully metered. That obviously encourages conservation and stream enhancement, and those are things that we should be encouraging.

I do not, however, believe that it is acceptable to charge against this allocation the water used for snow making, unless that snow is produced for use outside the basin. And I hope that this subcommittee will not accept amendments that might alter that feature of the bill.

With regard to the Truckee basin, I agree that the most equitable allocation would be 32,000 acre-feet per year, as measured by diversion. But I will be opposed to a proposal that may be offered to require the Tahoe-Truckee Sanitation Agency to purchase water from preexisting water right holders, to replace water that would not be returned to the Truckee River basin as a result of any new method of treatment in disposal of wastewater which may be adopted by the Agency or which may be mandated upon the Agency. I think that would severely limit the agency's options for treatment and disposal, and certainly would add to the very high cost of sewage treatment in the north Tahoe-Truckee areas of California, if not completely prohibit it.

So I hope that that issue will be considered carefully as that proposal is made before the subcommittee. It seems to me that proposals such as that really go to the operational aspects of this agreement and perhaps should be reserved for an operating agreement that would be worked out subsequent to the passage of the bill.

All interested California parties also have a very strong interest in terms of this operating agreement which may pertain to the operation of reservoirs in the Lake Tahoe-Truckee River system. Any changes to that existing operation could adversely affect compliance with the waste discharge requirements and have other adverse impacts upon recreational environmental values in California. And so I hope that the operating agreement will be formally approved by California, as well as Nevada and others which may be subject to its terms.

With regard to interstate water transfers, Mr. Chairman, I am advised that there presently is in the bill, section 106(b) of the joint amendments, entitled Voluntary Interstate Transfers which would permit the future interstate transfer of any allocated water rights within the state into the other state, but subject to regulations that either state might adopt to prevent unreasonable effects on the environment or the economy of the area from which the transfers are made. That provision is certainly a good provision, and I support it. But I am concerned that it may be changed or altered in the amendment process, and if so, it could have a very harmful effect to some of my constituents.

In particular I would like to mention Sierra County, California. In Sierra County they enjoy a water right that dates back to 1870, which is held by the Sierra Valley Water Company, and pursuant to that right, they have been diverting water into Sierra County for almost 120 years.

I understand that a modification of this interstate transfer provision will be made which would substantially curtail either state's authority to regulate the interstate transfer of water. That modification could enable Nevada interests to buy the Sierra Valley water right from the water company and indeed remove it to Nevada for the benefit of the environment and the economy of the area to which it is transferred, without any accountability for the adverse impacts on the economy or environment that may result to the area from which it comes, namely Sierra Valley.

In the Sierra Valley there is a Sierra Valley marsh, which is a state and nationally recognized wetland. It has significant wildlife values. It certainly is in the interest of Congress to foster any kind of motivation to preserve those values.

And I think if that kind of amendment, therefore, is made to the bill, that we must give it careful review and evaluate carefully the impacts of any withdrawal of the water supply and the potentially detrimental effect upon a county such as Sierra County.

I think that without that kind of monitoring and careful review, we could create a disaster which could be comparable to or worse than the disaster suffered by Owens Valley at the hands of Los Angeles many years ago.

Mr. Chairman, on balance I think the bill moves us in the right direction. I, again, commend Senator Reid and those who have worked long and hard to bring it to this point. I do stand ready to offer any assistance that I may provide to see it through to final passage. Certainly we will have some interesting debate in the House as well, but I do think that we need to take this step, and I am grateful that the subcommittee is giving us this time to offer our observations. Thank you.

[The prepared statement of Mr. Shumway follows:]

The Honorable Norman D. Shumway
Testimony Before the Senate Energy and Natural Resources Committee
Subcommittee on Water and Power
February 6, 1990

Mr. Chairman, Members of the Subcommittee, I would like to express my appreciation for having been given the opportunity to convey my thoughts concerning S. 1554, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. I would also like to thank the Senator from Nevada, the Honorable Harry Reid, for initiating in the 101st Congress the settlement process of this longstanding dispute.

I support S. 1554 as a first step in resolving this dispute. However, I remain hesitant to its implementation until all aspects of the Operating Agreement, which the legislation requires, are resolved. Those aspects may include several outstanding issues between California and Nevada, depending on the outcome of ongoing negotiations between the parties involved.

With regard to the Lake Tahoe allocation, I believe that allocation, as presently agreed upon at 23,000 acre feet per year for California and 11,000 acre feet per year for Nevada, is acceptable. These figures were reached over twenty years ago by the two states and are reflective of a comprehensive plan administered by the relevant authority, the Tahoe Regional Planning Agency. These allotments represent what is thought to be sufficient water for maximum future development, and are thought to be the most equitable between the states for these future growth projections. I also agree that this allocation should be measured as the cumulative sum of all meters in a fully metered system, and at the point of diversion for a system which is not fully metered. This will encourage conservation and stream flow enhancement, and it will designate as federal law the conservation practices that have been used in various areas of the Tahoe basin since 1976. Furthermore, it will extend these same practices to those entities which presently are not practicing conservation. However, I do not believe it is acceptable to charge against this allocation the water used for snow-making, unless that snow is produced for use outside the basin, and I strongly urge against inclusion of this proposal in S. 1554.

With regard to the Truckee basin, I agree the most equitable allocation would be 32,000 acre feet per year as measured by diversion. Clearly, this is the easiest way to measure the amount of water consumption in the Truckee basin. However, I am opposed to any proposal that would require the Tahoe-Truckee Sanitation Agency to purchase water from pre-existing water right holders to replace water that would not be returned to the Truckee River Basin as a result of any new method of treatment and disposal of waste-water adopted by the Agency. This would severely limit the Agency's options for treatment and disposal, and would increase the already high cost of sewage treatment in the North Tahoe-Truckee areas of

California, if not outright prohibit it. It is apparent that different levels of water flow in the Truckee River, contingent upon the Operating Agreement, may require different means of treating effluent by the Agency. Thus, this is an issue of operational nature, and I believe it should be worked out in the Operating Agreement that S. 1554 requires, not in the legislation itself.

Furthermore, all interested California parties have a strong interest in the terms of the Operating Agreement of reservoirs in the Lake Tahoe-Truckee River system and in the relationship between the Operating Agreement and the effectiveness of other provisions of S. 1554. As mentioned previously regarding the Tahoe-Truckee Sanitation Agency, any changes to the existing operation of the Lake Tahoe-Truckee River system could adversely affect compliance with waste discharge requirements and have other adverse impacts on recreational and environmental values in California. Therefore, it is necessary that the Operating Agreement be formally approved by California, among others, before the present operation of reservoirs in the Lake Tahoe-Truckee River system can be changed, and that approval of the Operating Agreement is required before other provisions of S. 1554 can become effective.

With regard to the issue of interstate water transfers, the bill should remain as it presently is drafted, authorizing each state to adopt legislation which provides that a state may withhold approval of an interstate transfer, if it finds that the transfer would adversely affect the economy or environment of the area of origin, or that the transfer is not in the public interest. Obviously, the two states need some review of any type of transfers between state lines for economic and environmental reasons, and California presently has no such law. I would not be in agreement with any proposals to curtail state authority to review and regulate such interstate transfers of water by limiting regulations for non-discriminatory criteria and procedures for such review. I would oppose this because there has never been any state regulation of the transfer of pre-1914 water rights within California, and there is little likelihood that the state legislature would enact any such statewide law. As a result, water could possibly be transferred from California to Nevada without any accountability for the adverse impacts to the economy or environment that may occur in the area of origin. In this respect, I am particularly concerned for the Sierra Valley marsh, in Sierra County, California. This marsh is a state and nationally recognized wetland with significant wildlife values. The marsh is the headwaters of the Wild and Scenic Feather River, possessing habitat for several rare, endangered, and threatened species of birds, insects, flora, and amphibians. The existence of this marsh area and the significant environmental values alone mandate the careful review of the impacts of any withdrawal of this water supply and its potential detrimental effect upon Sierra County.

It is necessary to me, as well as other California officials and interested parties, that these outstanding issues be resolved before support can be given to any settlement regarding Truckee-Carson-Pyramid Lake water rights. Likewise, I look forward to lending assistance in bringing resolve to this decades-old dispute.

Senator **Bradley**. Thank you very much, Congressman Shumway. You raise a number of very pertinent points.

Congressperson Vucanovich.

STATEMENT OF HON. BARBARA F. VUCANOVICH, U.S. REPRESENTATIVE FROM NEVADA

Ms. **Vucanovich**. Thank you, Mr. Chairman. Mr. Chairman, thank you for scheduling this hearing today on such a crucial matter to the States of Nevada and California, and to the United States as well, in light of the Federal Government's trust responsibility to the Indian tribes living at the mouths of the Truckee and Carson Rivers.

I cannot overemphasize the importance of these rivers and Lake Tahoe to the well being of my district. The water in these basins is the lifeblood of commerce in the Truckee Meadows and the Lahontan Valley, as well as sustenance for fish and fowl alike in Pyramid Lake and the Stillwater and Carson Lake wetlands.

Perhaps no other issue aroses greater passions among my constituents than does the allocation and use of this precious resource, and I have to say with great sincerity that Senator Reid and his staff are deserving of great praise for bringing together parties that long have been at odds with one another over the proper disposition of the Truckee River system.

I know from previous efforts how difficult a task this is. The complexities of the legal document of prior appropriation of water, intertwined with the Endangered Species Act and migratory waterfowl considerations, topped off with the issue of Indian sovereignty versus state authority for adjudicating water rights, is a Gordian knot for policy. But we need a settlement so that western Nevada can plan a predictable water future.

So, too, should the Chairman of the Pyramid Lake Tribal Council, Joe Ely, be congratulated for the foresight he has exhibited to reach the preliminary settlement agreement embodied in the legislation before us today. The storage credit approach in that agreement generated by the water purveyor for the cities and Reno and Sparks, Westpac Utilities, is an innovative concept, the sort of thinking which will be necessary if a solution to drought protection for western Nevada is to be found.

It is to Joe Ely's credit that he has championed a negotiated settlement within his tribe, when so many parties on all sides of the issue have been distrustful of the bargaining table. I firmly believe that only a negotiated settlement based upon a dispassionate analysis of the facts will bring an end to the water wars.

And Senator Reid and I both have the same thoughts on this subject. However, that settlement should and must bring as many players in this drama into the act of negotiation as is possible. The hearing today has excluded some of these parties, such as the Washoe County Water Conservation District.

Mr. Chairman, at this time I ask permission to submit for the record the testimony of Les Gray, attorney for this group, and trust that his views will be considered by your subcommittee.

Senator **Bradley**. The views will be submitted, and I appreciate you calling that to our attention. And we welcome the views of all interested parties, including this Representative.

[The material referred to follows:]

WASHOE COUNTY WATER CONSERVATION DISTRICT

Testimony of Leslie B. Gray

Re: S. 1554

TESTIMONY on S. 1554 before the Subcommittee on Water and Power, UNITED STATE SENATE, February 6, 1990.

Mr, Chairman and members of the subcommittee:

My name is Leslie B. Gray, counsel for THE WASHOE COUNTY WATER CONSERVATION DISTRICT, Reno, Washoe County, Nevada. I am a qualified and practicing attorney with an office at 3540 Wedekind Road, Sparks, Washoe County, Nevada 89431. My telephone number is (702) 358-4153. I and my predecessors in my law firm have represented the District from its commencement or organization as a public corporation in 1929.

We are advised that the schedule of witnesses is full and that we will not be allowed to testify in person. We respectfully suggest that there should be an expanded hearing or further hearings and that all interested parties have a right to be heard. If that is refused we will register our protest and we will submit our written testimony as follows:

The District was and is a major party in this matter. Nonetheless, our organization was excluded entirely from all the negotiations which led to the introduction of this legislation. We have been warned by the Project Director of Reclamation that we should not oppose this legislation because you will not listen to us. We believe that this proposed legislation (and we just got a copy of it last week) should be reviewed with great care for the following reasons:

1. It is a settlement between the Tribe and Sierra Pacific Power Company with the apparent approval of Senator Reid and most of the agencies of government bureaucracy. The Tribe purports to give storage water

in Stampede to Sierra Pacific. The Tribe doesn't own that water. It has a hold on Stampede pursuant to a court order "until the fish are no longer endangered or threatened."

2. The so-called "settlement" agreement between these two parties has no right or authority to perpetuate the status of the fish. It is clear, and has been for years, that the Lahontan cutthroat trout are no longer endangered. The same is true of the cui-ui although no one admits what their status is. Independent study should be conducted. In any event this entire legislation built on the endangered species act is totally unwarranted and improper.

3. What the Tribe is accomplishing and this legislation will permit is the operation of the entire water system of northern Nevada for the fishery at Pyramid. The latest proof of that is a letter dated October 10, 1989 from Mr. Pelcyger to all concerned demanding that uncommitted water stored in Prosser Creek Reservoir be committed to the Pyramid Fishery. We refused and we assume that the various agencies did too. But one can't be sure. We received no response from our letters to the project director or the Regional Director of Reclamation. We do know that Reclamation sought our approval to use some of that water for Stillwater. We all agreed despite the fact that the last time the District permitted such an exchange we lost our water. But who scuttled that generous help

for Stillwater? The Tribe which cares for nothing else but Pyramid.

4. One thing all concerned should be alert about is this: The Tribe, its activist attorneys, political scientists and law professors are determined and dedicated to alter and change the fundamental water rights law and at least as to Indian water rights, to establish them as "free of state control and state jurisdiction." That's a quote from Robert S. Pelcyger in a Symposium, 1982. This policy change is adumbrated by their writers and spokesmen in an unrelenting stream. When it is recognized that the Indians control the federal bureaucracy and that they have unlimited Federal funding (not to mention their exacting trust funds from the states and the cities and the county) it would behoove us to review the law of water and the history of these controversies.

This District was a major party and signator to the Truckee River Agreement that was approved and adopted by the ORR DITCH decree in which my predecessor was lead counsel. In 1973 the UNITED STATES commenced an action on behalf of the Tribe to open up ORR DITCH and set aside the Truckee River Agreement to establish a fishery right to water for Pyramid Lake.

After 44 days of trial and considerable expense the Federal District Court rejected the claim and dismissed the complaint. The water rights for 17,000 defendants in the Truckee River system including the water rights owners in the Newlands Project represented by the Truckee Carson Irrigation District were sustained.

The Supreme Court of the United States in a unanimous decision sustained the District Court in every respect. The decision in NEVADA v. United STATES et al, 463 U.S. 110, June 24, 1983, should be read and understood by all concerned with this legislation. It stands for the following:

1. Efforts to restore the fishery have occurred since the 1940s. The Lake has been stabilized as testimony in 1976 proved, the restoration efforts appeared to justify optimism for eventual success. (footnote 7)
2. "We are bound to say that the Government's position, if accepted, would do away with half a century of decided case law relating to the Reclamation Act of 1902 and water rights in the public domain of the West." p 10
3. Water Rights are governed by the States. "In the light of these cases, we conclude that the Government is completely mistaken if it believes that the water rights confirmed to it by the ORR DITCH decree in 1944 for use in irrigating lands within the Newlands Reclamation Project were like so many bushels of wheat, to be bartered, sold, or shifted about as the Government might see fit." pp 14-15
4. Footnote 14, p 24: "In 1951 the Tribe sued the Government before the Indian Claims Commission for damages, basing its claim of liability on the Tribe's receipt of less water for the fishery than it was entitled to. (citation omitted) In a settlement the

Tribe was given $8,000,000 in return for its waiver of further liability on the part of the United States." So much for the waiver!

5. Footnote 16, portion at p 33: "If in carrying out their role as representative, the Government violated its obligations to the Tribe, then the Tribe's remedy is against the Government, not against third parties. As we have noted earlier, the Tribe has alreddy taken advantage of the remedy."
6. Justice Brennan in his concurring opinion emphasizes that the remedy is against the United States. In his footnote to the end of his brief opinion he urges "judicious management of Derby Dam and Lahontan Reservoir, improvement of quality of Newlands Project irrigation works, application of heretofore unappropriated floodwaters, or invocation of the decree's provisions for restricting diversions in excess of those allowed by the decree." To which I added in a settlement suggestion, permit the Tribe to use its decreed rights (they were awarded far more than they have ever used) for the fishery. Also, I suggested that a share of Stampede be fixed for them.

A chronology is significant. While we were trying the main case, NEVADA v. UNITED STATES, Supra, the Carson-Truckee Water Conservancy District, Sierra Pacific Power Co., and the State of Nevada sued the Secretary of the Interior to require him to enter into the repayment contract on Stampede and sell the municipal and industrial water from Stampede to the Conservancy

District which in turn would sell to the Power Company and others. All of this had been hung up for years by the Tribe just as they managed to prevent the California-Nevada Interstate Water Compact from being approved by the Government.

The Tribe intervened as a defendant and Judge Solomon ruled in a two-part decision as follows:

1. February 16, 1982---It traces the history of the Conservancy District and finds that it and the plaintiffs have standing to maintain the action. In the course of the opinion it is stated that the plaintiffs "are the only entities in the area with the ability to purchase water." p 9. After all the good the Conservancy District has done and after the great cost and effort that it has put into its work, it would be a travesty to permit the Sierra Pacific Power Co., and the Tribe to ignore and decimate them.
2. The second part of the judgment is dated October 4, 1982. It confirms the foregoing but concludes that the Secretary must operate Stampede "for the benefit of the Pyramid Lake cui-ui fish and the Lahontan cutthroat trout" until the fish are no longer threatened or endangered. He goes on to say, "This may take many years." Well, recovery has been going on for years and years and there is no justification for permitting this gargantuan rip-off to continue unabated and without a strict accounting of the money spent and the status of the fish.

In October, 1985, after 5 1/2 years of serious and fruitful negotiation we arrived at an overall settlement of the entire water wars. It can be proven that is was settled, that it was fair to all parties and that it was subject to trial and adjustment. There is no point in going over what happened when the Tribe reneged on its word. Except that I challenge anyone to show wherein or why that settlement wasn't a fair one.

Enter Senator Reid. June 5, 1987 his Legislative Director, Wayne Edward Mehl and Melanie L. Beller, his Legislative Assistant met with the Conservancy District board members and our District Board of Directors. Mr. Mehl told us they were on an investigative trip and planned on meeting with all the interests to see if the settlement could be reconsidered and put back on track. At the end of the meeting he looked right at me and stated something like this: With apologies to present company, we are not going to deal with the lawyers. My response was that I would welcome that PROVIDED that meant he wouldn't deal with Mr. Pelcyger. I'm told they tried to exclude Pelcyger but that didn't work and, of course, Pelcyger has fashioned this "settlement" which is no settlement at all!

We never heard anything again although Mr. Mehl stated he would get back to us. No one has ever explained why we were excluded except that Senator Reid has said our rights were protected.

We made efforts to learn about the negotiations but we were unable to get anything but second hand information. We have made efforts to establish the status of the cui-ui but the Department of Justice and the U.S. Fish and Wildlife stonewall us unjustifiably. I will say this: it can be proven beyond any doubt, that the Lahontan cutthroat trout are fully recovered. The cui-ui are too. Or they should be.

On November 3, 1987 we sent the attached comprehensive letter to Senator Reid. Exhibit A.

His response of November 13, 1987 is to the effect that the Congressional delegation can only facilitate not force a solution. Exhibit B.

Our reply dated December 3, 1987 explained our position further and requested a meeting. Exhibit C.

His reply, December 11, 1987 is Exhibit C. We tried to locate Mr. Mehl without success. We weren't able to get to his town meeting in Fallon but it was reported to be poorly attended and of no consequence. A night or so later, Senator Hecht had a meeting where there were over 600 people there. Undersecretary Gjelde promised to listen but he never did. Senator Hecht wasn't able to do anything but he did get 1.5 million to buy water rights for Stillwater. What has happened to that, we do not know but it would be a good thing to find out. Check with U.S. Fish and Wildlife.

Except for occasional blurbs in the papers nothing seemed to be in the works. Attached as Exhibit D is Senator Reid's Report, Winter 1988 with 'High Noon' On Water Negotiations.

Our next stab at getting involved is the enclosed letter to Senator Reid dated May 3, 1989 in behalf of the Ditch Companies. The last letter we mark Exhibit E.

Senator Reid's reply dated May 9, 1989, Exhibit F, shows that no other interests are to be considered, not our District, not the Conservancy District, not anyone on the system but the

Tribe and Sierra Pacific. We are relegated to being bystanders while the entire system is turned on its head so that the fishery will operate as it did in the days of Fremont. The Ditch Companies, we suppose, can fend for themselves.

We are being forced to join the silent minority in right field: with TCID and the Fallon people and the Fallon Tribe, the Conservancy District and us. What a contrast: in 1985 we were all together including the Tribe. Senators Laxalt and Hecht, Congressman Vucanovich and Reid, Governor Bryan all joined and understood that it was a good settlement. The Attorneys General, the Director of Conservation and Natural Resources, the Commissioner of Reclamation, the County of Washoe, the cities of Reno and Sparks were all uniformly and enthusiastically in support of the settlement.

Where are they today? After the signing of this settlement they, like us, were in the dark as to what was being done. We remember as recently as October last being told by this same Project Director of Reclamation that they didn't know what the settlement was and that they couldn't believe the figures touted as back-up drought storage. He said that instead of 39,500 it was probably more like 14,000. Whatever it is, it proves that the Tribe can release its hold on Stampede and the Secretary should do his duty pursuant to the Endangered Species Act and declassify the fish.

Where are they today?

The Attorney General is a lame duck and has continued to rely on the Director of Conservation and Natural Resources, Roland Westergard and his Special Deputies Attorney General.

Mr. Westergard retires the day after his hearing. He was supposed to have presented that which has been worked out with the State of California on the Compact. We understand that there have been problems with the sovereign Paiute Indian Nation. Incidentally, when and if these major problems are worked out, does that mean a new Compact is imposed on the States? We remind you, that the presently smooth-operating and efficient operating Compact was worked out by the States of California and Nevada. It was adopted by the States, modified to satisfy the Tribe, and adopted again, sent to Congress where it has languished for 20 years. The Government backed lobbying power of the Indians is indeed awesome!

Next in line for change are the Floriston Rates. That will have to be carefully done and we will have something to say on that subject. Make no mistake about it.

We close by saying that there are so many things wrong with this legislation that it defies analysis. The message is loud and clear: secret negotiations and closed hearings produce only suspect and flawed legislation. While Democracy emerges in Europe and perhaps Communist Russia, Democracy in America is closing down. Think about it!

In passing, we say that the only good thing in this Bill is the Wetlands Protection, Title III. It should be severed and passed without delay with its $16,000,000 appropriation.

If nothing else causes this Bill to fail or fall by its own weight, it has to be TITLE V---PYRAMID LAKE DEVELOPMENT FUND. There is no way that this budget buster can be justified. The Senate's Special Committee on Investigations of the Select

Committee on Indian Affairs has on November, 1989 recommended a "New Federalism for American Indians". I quote from the release dated November 17, 1989: "The Committee's bipartisan and unanimous proposal would allow Indian tribes to completely take over both the resources and the functions of current federal Indian programs, including the Bureau of Indian Affairs (BIA)."

This will permit the $3.3 billion-a-year programs for Native Americans and the grants to go direct to the Tribes. It should be noted that in this entire 235 page report there is no mention of the Nevada tribes. This has to be because all spigots were open. As of this writing, we have not been able to get reliable figures on how much has been spent or is being spent at Pyramid. One inadequate report from the BIA has totals from 1981 through 1988 as follows:

Attorneys fees	Consulting	Total
$492,000	$757,200	$1,249,200

One thing is certain: before this appropriation is considered, there should be an audit to determine how much has been spent by the Government at Pyramid since 1970 and how musch is being spent currently. The audit should disclose the funds the Tribe has accumulated over the years from items like the $8 million from the Indian claims commission.

Respectfully submitted,

Leslie B. Gray

Leslie B. Gray
WASHOE COUNTY WATER CONSERVATION DISTRICT

January 26, 1990

WASHOE COUNTY
WATER CONSERVATION DISTRICT
275 HILL STREET · ROOM 23
RENO. NEVADA 89501
(702) 322-9139

November 3, 1987

The Honorable Harry Reid
The United States Senate
708 Senate Hart Ofc. Bldg.
Washington D. C. 20510

Dear Senator Reid:

We have noted and discussed your call for the Secretary of the Interior to develop a comprehensive water plan by November 1st. We also noted that the Secretary created a committee of representatives from each Interior Department bureau involved and that one of them speaking for the Department of Indian Affairs was formulating one but couldn't be ready by the deadline.

We agree wholeheartedly with your sense of urgency and respectfully suggest the following:

1. The entire delegation should join together so that the Congress and the Administration will know that the people of northern Nevada want a plan NOW.

2. Our Congressional delegation should immediately demand that the Department of Fish and Wildlife justify its water demands of this past season (they received more water than this District) and report the present status of the fishery.

3. Our Congressional delegation should immediately initiate an independent inquiry into the status of the Pyramid fishery with particular reference to our contention that the fish are no longer endangered or threatened.

4. Our Congressional delegation should immediately advise the Attorney General of the United States to suspend all pending litigation and file no new litigation on behalf of the United States until the foregoing matters are completed.

5. Millions have been spent in defense. How much has been spent by this Government at Pyramid or in its behalf since 1970? This is not a first priority. Our estimate is that about 100 million has been spent for Pyramid.

We have also noted in a previous story (October 11, 1987) that Secretary Hodel is changing his emphasis to the restoration of parks and the protection of endangered species. He should be instructed that the settlement of our water problems are vital and it should be finished before he

EXHIBIT A

addresses anything else. The Bureau of Reclamation has also stated it is going to change its focus. It is finishing its long-time purpose by leaving this District with a potential $850,000.00 obligation to cure a safety of operation matter at Boca Dam. We understand TCID is being required to carry the Lake Tahoe dam repair for an even greater obligation. Yet the truth of the matter is that the Fish and Wildlife use these facilities more than we do and we have to pay for repairs with no help. The solution should be that these items are really covered in Safety of Dams legislation but no one will even acknowledge the suggestion.

Washoe County Water Conservation
District

By Donald Casazza
President Donald Casazza

DC:pem
cc - attached list

Copies to:

The Honorable Chic Hecht
The United States Senate
302 Hart Senate Ofc. Bldg.
Washington, D.C. 20510

The Honorable Barbara F. Vucanovich
United States Representative
Cannon Ofc. Bldg. Rm 312
Washington, D. C. 20515

The Honorable James Bilbray
United States Representative
1431 Longworth House Ofc. Bldg.
Washington, D.C. 20515

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J. BENNETT JOHNSTON, LOUISIANA
QUENTIN N. BURDICK, NORTH DAKOTA
PATRICK J. LEAHY, VERMONT
JIM SASSER, TENNESSEE
DENNIS DeCONCINI, ARIZONA
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ALFONSE M. D'AMATO, NEW YORK
WARREN RUDMAN, NEW HAMPSHIRE
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHARLES E. GRASSLEY, IOWA
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FRANCIS J. SULLIVAN, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

November 13, 1987

Donald Casazza
President
Washoe County Water
Conservation District
275 Hill Street
Room 23
Reno, Nevada 89501

Dear Mr. Casazza:

Thanks for contacting me about the water situation on the Truckee-Carson River system.

I share your concern about the future of the Truckee-Carson system. I have been working on this problem since last spring and just recently, as you know, I have called upon all of the interested water users to come together and work out a negotiated settlement to the water use in the valley. The water situation continues to get worse because because of the battles taking place the federal courts. I understand your call for action to settle the situation, but the congressional delegation can only help to facilitate a solution -- not force one. There can be no forced settlement of this issue by the federal government. That has been tried and it failed. I have no doubt that unless the water users on the system reach a negotiated settlement on the division of water, the decision by the Bureau of Reclamation on the OCAP for Lahontan will once again be challenged in the courts; with the outcome being even less water for the valley.

The division of water in the Truckee-Carson system is the single most important problem facing northern Nevada and I will be giving a lot of my attention to trying to help solve it. I am glad to know of your concerns and interest and you can be sure that I will make your views known as we move forward on this issue.

Best regards.

Sincerely

Harry Reid

Harry Reid
United States Senator

EXHIBIT B

WASHOE COUNTY
WATER CONSERVATION DISTRICT
275 HILL STREET • ROOM 23
RENO, NEVADA 89501
(702) 322-9136

December 3, 1987

The Honorable Harry Reid
The United States Senate
708 Senate Hart Office Bldg.
Washington D. C. 20510

Reply to Senator Reid:

Thank you for your reply of November 13, 1987

Again, we discussed the matter at our December 1st meeting. It was suggested that we write you again because it appears that we haven't made our position clear.

First, although we are vitally involved in the issues here in northern Nevada, we feel that we are the closest to being a neutral party. After 11 years of costly litigation, our water rights pursuant to the Orr Ditch decree were sustained by the U. S. Supreme Court. In that narrow respect, our 22,000 parcel owners can get by without a settlement.

Nonetheless, we have participated in most of the settlement negotiations, particularly the negotiated settlement that was arrived at after 5½ years. This was not a forced settlement. It was reneged on by the Tribe by a dissident group just prior to our going to the expense and trouble of going to Washington to testify in October, 1985. As you will remember, the entire Congressional delegation testified in favor of the settlement.

Thereafter, all the parties were left with no information as to what the Tribe wanted and except for what we read in the newspapers were without a place to start again. After repeated requests, we finally received from Joe Ely, the new Tribal Chairman, a copy of the December 12-13, 1985 Pyramid Lake Tribe's Proposed Water Rights Settlement Package. We assume you have a copy which we weren't able to get until May of this year.

It appears to us that there is no room for negotiation on the basis of this proposal and that is the reason there have been no negotiations.

We respectfully suggest that former Senator Laxalt's attempt to get the California-Nevada Interstate Compact approved in October, 1986 was not an attempt at a forced settlement.

EXHIBIT C

JOHN C. STENNIS, MISSISSIPPI, CHAIRMAN

ROBERT C. BYRD, WEST VIRGINIA
WILLIAM PROXMIRE, WISCONSIN
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ERNEST F. HOLLINGS, SOUTH CAROLINA
LAWTON CHILES, FLORIDA
J. BENNETT JOHNSTON, LOUISIANA
QUENTIN N. BURDICK, NORTH DAKOTA
PATRICK J. LEAHY, VERMONT
JIM SASSER, TENNESSEE
DENNIS DeCONCINI, ARIZONA
DALE BUMPERS, ARKANSAS
FRANK R. LAUTENBERG, NEW JERSEY
TOM HARKIN, IOWA
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HARRY REID, NEVADA

MARK O. HATFIELD, OREGON
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CHARLES E. GRASSLEY, IOWA
DON NICKLES, OKLAHOMA

FRANCIS J. SULLIVAN, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

December 11, 1987

Don Casazza
President
Washoe County Water Conservation
District
275 Hill Street, Room 231
Reno, Nevada 89501

Dear Mr. Casazza:

Thanks for getting back to me again on your concerns over the water situation on the Truckee-Carson River system.

I appreciate your efforts to further explain your position on our water problems. I do understand your concerns. My previous comments were aimed at presenting the situation as I see it. When I say that there can be no "forced" settlement on this issue by the federal government, I am saying that unless everyone agrees there will be no permanent solution. The hard facts are that as long as any one water user is opposed to a permanent decision on water use in the system there is very little chance of any legislation being enacted into law. As I understand it, the reason that Senator Laxalt didn't push his legislation last year was because it would have been opposed by the Bureau of Indian Affairs and the Department of Interior and could not have passed.

I have offered my help in trying to reach a negotiated settlement on the division of water in the Truckee-Carson system and I believe that I have some ideas that might help reach a negotiated settlement. However, ultimately any agreement will have to be reached by the water users. I would say to you as I have said to everyone else, if anyone has a better way to reach a solution on this intractable problem, I would like to hear it.

I agree with you that we should discuss this situation in more detail. Wayne Mehl of my staff will be in the Reno area the first week of January for the purpose of meeting with interested parties on the Truckee-Carson system. I would encourage you to contact my Reno office to set up a meeting with him during that

EXHIBIT D

Page 2

[illegible]-7343

week. I will be holding a town meeting in Fallon on January 9, 1987 to discuss the water situation and I hope to see your there.

Best regards.

Sincerely,

Harry Reid

Harry Reid
United States Senator

HMR:wem

EXHIBIT E WINTER 1988

'High Noon' On Water Negotiations

It's high noon on the Truckee River. We have been arguing for nearly 80 years over who gets how much water. We are in the second year of drought conditions. The little river on which thousands of Northern Nevadans depend for their drinking, bathing, home, municipal and industrial uses is showing us its limits.

Unless we manage the water wisely, the Truckee River and the Carson River cannot continue to quench the thirst of rapidly growing Reno, Sparks and Carson City, meet the needs of the farmers and ranchers, provide enough water for Pyramid Lake and replenish the wetlands. Because of the drought, we must work more quickly than ever to settle these problems.

This year, I worked to bring the affected parties together to discuss their decades-long arguments about allocation of water in the area. And with the help of all these parties--Westpac Utilities, the state of Nevada, the Truckee-Carson Irrigation District and the Paiutes--I expect to introduce legislation in the 101st Congress that will settle this dispute.

RENO, NEVA
WATER

Sen. Harry Reid addresses the Reno Host Lions Club about northern Nevada's water problems.

The attempt to compromise among these users and others--including representatives from the Carson City area and from Reno and Sparks--have been long and arduous. The negotiations spanned many months.

These negotiations marked a milestone in the drawn-out debates over who gets how much water--they sat down themselves and are working out their own arrangements. Legislation and litigation have failed in the past, and all concerned realized the time was right for negotiation.

It is my hope that the legislation that comes out of these negotiations will settle the questions of water allocation. We can wait no longer.

WASHOE COUNTY
WATER CONSERVATION DISTRICT
275 Hill Street Room 230
Reno, Nevada 89501

May 3, 1989

The Honorable Harry Reid
United States Senator
300 Booth Street
Reno, Nevada 89502

Dear Senator Reid:

The Washoe County Water Conservation District was formed to present a uniform group representing the irrigating interests of the Truckee Meadows. The District sponsored and has paid the construction costs at Boca Dam and Reservoir and pays the operation and maintenance costs at the Dam.

The District took the lead in creating and is a signator to the "Truckee River Agreement" that made the Orr Ditch Decree operable and modified the 1915 Decree to conserve Tahoe water.

The District had one brief meeting with your representative, Mr. Wayne Mehl, but have never been party to the negotiations leading to the proposed "Final Solution" to the Truckee River's problems. We have been assured, informally, by some of the negotiators that our members' interests will be protected but have yet to see any evidence of that. We are taking this method to express some of the main concerns that we think should be included in any "Total Solution ".

First it should be pointed out that the District only operates Boca Reservoir. The system ditch companies are separate entities and are responsible for their operation and maintenance. That, collectively they represent more acre feet of Truckee River water than Sierra Pacific Power Company or the local government entities. That, although considerable amounts of irrigation water is being converted to municipal and industrial uses there will always be a demand for irrigation water in the Truckee Meadows.

The operation of the irrigation system is totally dependent on the "Floriston Rates" as set out in the 1915 Decree and the Truckee River Agreement and any modification of those rates must be carefully considered and agreed to by the Truckee River Agreement signators.

EXHIBIT F

The ditch companies have other considerations that should be incorporated into any final Federal legislation. In order that maximum operating efficiency can be attained, all the diversion dams and headworks should be rebuilt (you can't just put a "cat" in the river to rebuild a dam today because of a multitude of restrictions.) Proper measuring devices must be installed with this work. Further, in pursuit of more efficient operation of the system, funding should be provided to reduce seepage and to prevent "breakouts" from storm water and erosion.

In an attempt to pull together a comprehensive program to present for your consideration, the Washoe District has called a meeting of all the ditch companies' representatives together with the USDA Soil Conservation Service on May 16, 1989. When the program is finalized we will forward it to your office.

The purpose of this letter is to alert the negotiators that the Truckee Meadows Irrigation System urgently needs consideration and that planning and financial help will be requested.

Very truly yours,

Donald Casazza

Donald Casazza
President

DC:pem

HARRY REID
NEVADA

COMMITTEES:
APPROPRIATIONS
ENVIRONMENT AND PUBLIC WORKS
SPECIAL COMMITTEE ON AGING

United States Senate
WASHINGTON, DC 20510

May 9, 1989

Donald Casazza
Washoe County Water Conservation
  District
275 Hill Street
Room 230
Reno, Nevada 89501

Dear Mr. Casazza:

Thank you for writing about the water negotiations.

The first thing that ought to be cleared up is that there is no "Final Solution" to the Truckee River water problems being negotiated. The negotiators have been trying to come up with a proposed agreement on some of the outstanding problems on the river that can be offered as an alternative to the status quo.

It is our intent that all water right holders, not just those in the Conservation District, have their rights fully protected in any legislation that passes Congress dealing with this agreement. Language providing such protection will be included in the legislation and any associated agreements and the District will have an opportunity to review this as soon as it is available. If the District does not feel that it is protected it will have ample opportunity to discuss that directly with the negotiators.

Nothing in this proposed agreement will affect the internal operation of the District irrigation system. There will need to be improved monitoring of the river flow to insure that all water right holders are protected. Funds for that will be provided for in the legislation implementing the agreement, if such an agreement is reached. There is no assurance yet that an agreement can even be reached.

EXHIBIT G

CARSON CITY
800 E. WILLIAMS ST., SUITE 302
CARSON CITY, NV 89701
(702) 882-7343

LAS VEGAS
500 SOUTH RANCHO ROAD, SUITE 7
LAS VEGAS, NV 89106
(702) 388-6545

RENO
300 BOOTH ST.
RENO, NV 89509
(702) 784-5568

WASHINGTON, DC
U.S. SENATE
WASHINGTON, DC 20510
(202) 224-3542

Let me reemphasize that this proposed agreement was designed to completely protect agricultural water right holders on the river. It will impact only that water owned by Westpac and the water that flows into Pyramid Lake.

Best regards,

Sincerely,

Harry Reid

HARRY REID
United States Senator

HMR:wm

WASHOE COUNTY
WATER CONSERVATION DISTRICT
275 HILL STREET • ROOM 23
RENO, NEVADA 89501
(702) 322-9139

May 26, 1989

Honorable Harry Reid
United States Senator
300 Booth Street
Reno, NV 89509

Dear Senator Reid:

Thank you for your response of May 9th.

Please excuse us for misunderstanding the negotiations. We only know what we read in the newspapers and we sometimes jump to unwarranted conclusions.

We would like to see what was signed this week and we would like now to be heard and be given the opportunity to present our concerns.

As stated in our letter of May 3rd, we were getting the ditch companies together on May 16th. Minutes were taken of that meeting and we would be glad to make them available to you. After full discussion, the companies were requested to list their problems and estimate the costs involved in correcting them. At our June 6th meeting those will be digested and sent to you.

Some of these problems will make the distribution system more efficient and result in the saving of additional water. The ditch companies haven't the funds nor are they obligated in most instances to bear the expense of rehabilitating the system. They have to look to the governmental agencies, cities, counties and the Federal Government.

Gene Evans and Frank Titus indicated that you might be available to look at their particular problem. It is a good example of what we are up against. The estimate to correct that erosion problem is $20,000.00.

We do look forward to working with you and will appreciate hearing from you again in this regard.

Sincerely,

Donald Casazza

Donald Casazza,
President

EXHIBIT H

DC:ge

WASHOE COUNTY WATER CONSERVATION DISTRICT

Supplemental Testimony of Leslie B. Gray

Re: S.1554

It is respectfully requested that the following corrections be made:

Page 8, December 11, 1987 letter from Exhibit C to D.

All exhibits thereafter changed to E, F, and G.

Exhibit H is not referred to but is self-explanatory.

Page 10, line 1, should read: "...after this hearing..."

Page 11, middle of last paragraph should be "much".

It is also respectfully requested that at the time of the submission of this testimony at the hearing, it be permitted that we submit what appears to be the latest brochure on Pyramid Lake. It shows that the Lahontan cutthroat trout have been recovered and that since 1974 the factilties have become operational.

Respectfully submitted,

Jan 29, 1990

Leslie B. Gray
WASHOE COUNTY WATER CONSERVATION DISTRICT

Ms. VUCANOVICH. Thank you very much, Mr. Chairman.

Over the last several months I have heard a steady drumbeat of arguments for and against incorporating entities into this bill that are not now part of S. 1554. Whether the Truckee-Carson Irrigation District, TCID, walked away from the negotiations or was barred from real participation in the making of this bill matters very little at this point. We simply cannot expect to legislatively end the years of litigation over Truckee and Carson River water without involving such a major player in the deal.

Likewise, we must remember that two separate Indian tribes are downstream users of this water. There is an inclination to forget the Fallon Paiute-Shoshone Tribe, or to simply lump their interests together with those of TCID, perhaps because they have not chosen to litigate their grievances at every turn.

This tendency has been played out for over a decade, since Public Law 95–335 was signed into law. Congress then recognized the government's duty to provide recompense to the Fallon Tribe for the taking of their lands at the turn of the century, lands that are now the Newlands Reclamation Project. But meeting that ignored obligation need not be cast solely as irrigators, as the Fallon Tribe is, versus endangered fish.

I am hopeful, as I am sure Senator Reid is as well, that before the close of this Congress, the Department of the Interior will have facilitated a settlement of the obligation due to the Fallon Tribe that all parties could agree to make part of this bill.

Given this desire on my part and what I believe is a sincere desire on the part of the Truckee-Carson Irrigation District to end the litigation that is bleeding their water users dry, I introduced a companion bill last Thursday.

My bill, H.R. 3941, is structured to match that of S. 1554 wherever possible, and I fully acknowledge that Senator Reid is the major proponent of this bill. Both bills would ratify interstate allocations of Lake Tahoe, Truckee and Carson River waters, although my bill has the benefit of incorporating more recent negotiations involving the States of Nevada and California together with the Pyramid Lake Tribe.

This part of our bills, Title I, would finally provide the necessary congressional sanction to a process begun in 1955 when President Eisenhower established a commission to begin these negotiations.

Title II of our bills would establish a Truckee River operating agreement. The new operating agreement would be an addendum to the current agreement that was made part of the General Electric Decree and the Orr Ditch Decree, and must be ratified by those courts before becoming effective. Parties that were signatories to the early agreement that would not be in the new agreement may elect to challenge the new river operating agreement when it is presented to those courts, if they believe their interests are in any way aggrieved.

Both bills reiterate that no adjudicated water rights would be dismissed in any way by the operating agreement. Though I have elected to spell that out in several places in my bill, let me make clear that I fully intend to have state law continue to control adjudication of water rights.

Title III of both bills would establish a program for Federal acquisition of actively used water rights from the Newlands project for dedication to the Lahontan Valley wetlands.

Title IV of both bills would establish a cui-ui and Lahontan cutthroat trout recovery program, including lower Truckee River spawning habitat improvement and delta access modifications by the Corps of Engineers.

Title V of both bills would establish a Pyramid Lake economic development fund. I have purposely not included a monetary figure for capping the authorization of appropriations into this fund. I believe that much more work needs to be done to arrive at a justifiable figure, work that I understand has traditionally been within the purview of the Select Committee on Indian Affairs within the Senate and within my own Interior Committee in the House.

Title VI of my bill is the major difference with S. 1554. In it I would establish incentives for both the Pyramid Lake Tribe and TCID to negotiate a settlement to the outstanding litigation on the operating criteria and procedures, the OCAP, for the Newlands project.

Both bills require the dismissal of certain lawsuits or claims in order for all or part of the act to become effective. But my bill would insist that the dismissal of the claims be with prejudice, so that the issues could be permanently put to rest.

H.R. 3941 further states that the federally owned water rights at the Fallon Naval Air Station which are not needed for fire and dust abatement will not be exercised upon settlement of the OCAP litigation by the Pyramid Lake Tribe and TCID. By not using these rights, less Truckee water would be needed to be diverted at Derby Dam, thus increasing flows into Pyramid Lake. An annual net increase to Pyramid Lake of 5,800 acre-feet annually is estimated to result from this section in all but the driest years.

The incentive for TCID to settle is the cancellation of the remaining repayment obligation on the project, about $1.5 million, I am told. Furthermore, H.R. 3941 would authorize a Nevada settlement fund of $17 million for efficiency improvements on the Newland project. This would be a further benefit to the Pyramid Lake Tribe, because less Truckee River water would be needed by TCID to meet their legal requirement to deliver to the irrigation water to each farmer's headgate.

S. 1554 would transfer the Fallon Naval Air Station water rights to the Pyramid Lake Tribe, without requiring OCAP litigation settlement, thus removing incentives for settlement.

Furthermore, there are ambiguities in this title as currently drafted concerning the Federal versus State nature of the transfer of this water right and the quantities involved. H.R. 3941 is much more akin to the 1985 Laxalt-Reid-Vucanovich-Hecht Bill, than is S. 1554, in that an overall settlement of the Tahoe-Truckee-Carson water battles is sought.

Importantly, though, all but Title VI of my bill could become effective without settlement of the OCAP litigation, similar to S. 1554.

Another difference in my bill is that H.R. 3941 would require the Secretary of the Interior to study and mitigate the hydrological effects of the proposed water rights purchase program and naval air station retirement provision upon the shallow aquifer of the Lahontan Valley. Also, the socioeconomic impacts of the purchase program on Churchill and Lyon counties are to be studied and mitigated.

I believe that there are legitimate concerns in this regard. It may well be that water rights purchases in the upper Carson drainage from willing sellers in Nevada only, of course. It could be necessary to ameliorate adverse groundwater effects, or for that matter, to make the Fallon Tribe whole, while still promoting the recovery of the cui-ui of Pyramid Lake. My bill neither precludes such a solution nor mandates it.

In summary, Mr. Chairman, I urge support of the basic concepts of S. 1554. I believe my bill is a viable compromise, though it too will no doubt need substantial amendment as the remaining details of interstate allocations, Truckee water operating agreement, Reno-Sparks water meters implementation, tribal economic development funds and spawning habitat improvements are worked out. These are not insurmountable. Let's get on with the start that has been made and transcend our differences for the good of Nevada, California and our Indian tribes.

And again, Mr. Chairman, I thank you very much for holding this hearing. As you can see, it's a very important issue with all the people who are here today. And I appreciate your holding the hearing. Thank you.

[The prepared statement of Ms. Vucanovich follows:]

STATEMENT OF
CONGRESSWOMAN BARBARA F. VUCANOVICH
BEFORE THE
SENATE ENERGY & NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON WATER & POWER
HEARING ON THE TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT BILL

FEBRUARY 6, 1990

Mr. Chairman and members of the Subcommittee, thank you for scheduling this hearing today on such a crucial matter to the States of Nevada and California, and to the United States as well, in light of the federal government's trust responsibility to the Indian tribes living at the mouths of the Truckee and Carson Rivers. I cannot overemphasize the importance of these rivers and Lake Tahoe to the well-being of my district. The water in these basins is the life-blood of commerce in the Truckee Meadows and the Lahontan Valley as well as sustenance for fish and fowl alike in Pyramid Lake, and the Stillwater and Carson Lake wetlands. Perhaps no other issue arouses greater passions among my constituents than does the allocation and use of this precious resource.

I must say then with all sincerity that Senator Reid is deserving of great praise for bringing together parties that have long been at odds with one another over the proper disposition of the Truckee River system. I know from previous efforts how difficult a task this is. The complexities of the legal doctrine of prior appropriation of water intertwined with the Endangered Species Act and migratory waterfowl considerations, topped off with the issue of Indian sovereignty versus state authority for adjudicating water rights, is a gordian knot for policy-makers. But, we need a settlement so that western Nevada can plan a predictable water future.

So, too, should the Chairman of the Pyramid Lake Tribal Council, Joe Ely, be congratulated for the foresight he has exhibited to reach the preliminary settlement agreement embodied in the legislation before us today. The storage credit approach in that agreement generated by the water purveyor for the cities of Reno and Sparks, Westpac Utilities, is an innovative concept - the sort of thinking that will be necessary if a solution to drought protection for western Nevada is to be found. It is to Joe Ely's credit that he has championed a negotiated settlement within his tribe when so many parties - on all sides of the issue - have been distrustful of the bargaining table. I firmly believe that only a negotiated settlement, based upon a dispassionate analysis of the facts, will bring an end to the water wars.

However, that settlement should and must bring as many players in this drama into the act of negotiation as is possible. The hearing today has excluded some of these parties, such as the Washoe County Water Conservancy District. Mr. Chairman, I ask permission to submit for the record the testimony of Les Gray, attorney for this group, and trust that his views will be considered by your subcommittee. Over the last several months I have heard a steady drumbeat of arguments for and against incorporating entities into this bill that are not now part of S. 1554. Whether the Truckee-Carson Irrigation District (TCID) walked away from the negotiations, or was barred from real participation in the making of this bill, matters little at this point. We simply cannot expect to legislatively end the years of litigation over Truckee and Carson River water without involving such a major player in the deal.

Likewise we must remember that two separate Indian tribes are downstream users of this water. There is an inclination to forget the Fallon Piute-Shoshone Tribe, or to simply lump their interests together with those of TCID, perhaps because they have not chosen to litigate their grievances at every turn. This tendency has been played out for over a decade, since P.L. 95-335 was signed into law. Congress then recognized the government's duty to provide recompense to the Fallon Tribe for the taking of their lands at the turn of the century - lands that are now the Newlands Reclamation Project. But meeting that ignored obligation need not be cast solely as irrigators (as the Fallon Tribe is) versus endangered fish. I am hopeful, as I am sure Senator Reid is as well, that before the close of this Congress the Department of the Interior will have facilitated a settlement of the obligation due the Fallon Tribe that all parties could agree to make part of this bill.

Given this desire on my part, and what I believe is a sincere desire on the part of the Truckee-Carson Irrigation District to end the litigation that is bleeding their water users dry, I introduced a companion bill last Thursday. My bill, H.R. 3941, is structured to match that of S. 1554 wherever possible. (I fully acknowledge the parentage of the major portion of my bill.) Both bills would ratify interstate allocations of Lake Tahoe, Truckee, and Carson River waters, although my bill has the benefit of incorporating more recent negotiations involving the states of Nevada and California together with the Pyramid Lake Tribe. This part of our bills (Title I) would finally provide the necessary congressional sanction to a process begun in 1955 when President Eisenhower established a commission to begin these negotiations!

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In summary, Mr. Chairman, I urge support of the basic concepts of S. 1554. I believe my bill is a viable compromise, though it, too, will no doubt need substantial amendment as the remaining details of interstate allocations, Truckee River operating agreement, reno/sparks water meters implementation, tribal economic development funds, and spawning habitat improvements are worked out. These are not insurmountable. Let's get on with the start that has been made and transcend our differences for the good of Nevada, California, and our Indian tribes.

Senator BRADLEY. Thank you very much, Congressperson, for the testimony and for offering the description of your own bill.

Congressman Shumway, let me ask you a quick question. You made the point about water for snow. Could you elaborate on that?

Mr. SHUMWAY. Snow making is a very frequently used process in the basin, and it seemed to me that if water is needed for snow making, that water is going to melt and it will go back to the basin. It should not have to be otherwise made up by those who are going to resort to that activity.

We understand that there may be some proposals made in that regard and I want to alert this subcommittee that indeed, if that is the case, we would have some reservation about penalizing the districts for water that may be taken for that purpose.

Senator BRADLEY. You mean penalizing skiing? [Laughter.]

Mr. SHUMWAY. We don't want to penalize skiers. That is one of our vital industries in the Tahoe Basin.

Senator BRADLEY. What was your point on the sanitation? Is it that you don't want to have the sanitation district forced to buy water? Is that the idea? What is your thought on that?

Mr. SHUMWAY. If the district should change its method of wastewater treatment, for example, and in the process require more water, or it may be mandated by some EPA regulation to take such a step, I don't think that the district should then be put in the position of having to go out and to buy additional water to do that. That would certainly add to the district's costs. It would compound the difficulty of treating water. It would perhaps have a very severe economic impact upon the people who are served by the district. So that is why I make that point.

Senator BRADLEY. Thank you.

Senator Reid, do you see anything in this bill that is inconsistent with Nevada water law?

Senator REID. No, Mr. Chairman. We have attempted and all the work that we have done has been directed toward having Nevada the ultimate decider of who and of where water goes and how it gets there should be decided by the State of Nevada.

Senator BRADLEY. You have worked so long and so hard and so effectively on this bill, I suppose that, like a great artist having put some work together, you might, at the end of it, think that a little stroke here or a little stroke there might make it even better. If you could make any change in this bill, what would you do?

Senator REID. Mr. Chairman, the one regret that I have had during the work that has been done on this bill is that we have not been able to work something out between the TCID and the Pyramid Lake Indians. We tried very, very hard. That is the big regret.

Fallon, Barbara mentioned also Fallon, and I was going to get to that. That is in a little different category. The Fallon, you know, they have been treated unfairly since this irrigation district was formed in 1902. You know, they were located where the irrigation district is now located, and they were moved with a promise that the Federal Government would take care of them. And, of course, it is 80-some odd years later and nothing has happened.

But my one major concern is that we were not able to work something out between the irrigation district and the Pyramid Lake Indians.

Having said that, Mr. Chairman, that doesn't take away from the fact that we have done a great deal of work that is very good work, keeping in mind that this drought year storage affects about 300,000 people. And that is what we have been trying to work out. We have been able to do that, to give 300,000 people, at least for the next four decades, some ability to plan their lives.

Senator BRADLEY. So you wouldn't make passage of the bill contingent upon resolving the issues with regard to TCID?

Senator REID. No, I wouldn't, Mr. Chairman. It wouldn't be fair to all the work that has gone into this agreement. The thousands of hours that the cities of Reno and Sparks, and the Indian tribes, and the State of California and the State of Nevada have gone into, it wouldn't be right to have one party be able to veto the agreement. It would be just as if the beginning of the Depression someone would say well we can't solve all the problems, so let's do nothing.

Senator BRADLEY. Could you describe—you have made efforts, though, to talk to TCID. I am sure that we will hear testimony later today about the need to resolve this. I am very interested in this issue. Have you made efforts to get everybody on board?

Senator REID. The court reporter can't take down a scowl or a frown, but we have spent endless hours trying to work something out between those two entities. We simply were unable to do so. And as I told a number of the people meeting in my office yesterday, as Barbara has just stated, there is no reason to pass recriminations as to why the irrigation district wasn't in the negotiations. The fact of the matter is they weren't for the past year and a half or so. It doesn't matter why they weren't; the simply fact is they have not been involved. And that has been a real concern, but we have certainly tried.

And I think that the suggestion that the Chairman has made, to give a fixed period of time to have one last shot at it, certainly shows a lot of wisdom. I think that I would continue to do what I can to facilitate this, and I am glad to see Senator Bryan and Congresswoman Vucanovich also willing to help in that regard.

Senator BRADLEY. In its testimony, which, by the way, we received in the period allotted, 24 hours in advance, we noticed that Churchill County has described some serious problems related to that area's domestic water supplies. Are you familiar with that, and do you see anything that the Federal Government could do to help resolve this?

Senator REID. Mr. Chairman, I am familiar with Churchill County. When I was in the State legislature in 1969 Churchill County had problems with their water. They have water that——

Senator BRADLEY. 19——, what was that?

Senator REID. '69. I was 14 years old in the State legislature. [Laughter.]

Senator BRADLEY. The youngest state legislator in America.

Senator REID. Churchill County has arsenic in their water, and it has been for many, many years a problem. Now, with the Clean Water Act, it is a bigger problem than ever. The problems relating to the arsenic in the water and the groundwater problems that Churchill County has is something that I think we need to look at in this legislation. I think that they need some help as to try to come up with a solution to their problem. Churchill County has, I think, about 19,000 people in it. Most of them are located right in the Fallon area, and it is a real problem.

I would also state, Mr. Chairman, that the irrigation district, which is important to Churchill County, has a lot of problems that certainly predate any work that I had on this bill. They are problems that have developed over the last 20 or 30 years, and I think that maybe some of these can be looked at during the next 90 days that you have set, also.

Senator **Bradley**. Another witness today raised the question as to whether the $16 million figure for the Federal acquisition of water rights would be sufficient. Now, in this kind of deliberation there is a tendency for people always to say that, whatever the number is, it is not enough. But $16 million is in the bill. Do you think that that is sufficient?

Senator **Reid**. Mr. Chairman, in addition to the $16 million, the State, with a little bit of luck, will have $10 million from the State, which would be a total of $26 million. If you could picture in your mind's eye this area that we are talking about, the Stillwater marshes, which have been in existence for 5,000 to 10,000 years—interestingly enough they should have dried up as a result of the Newlands project, because the Stillwater marshes were formed as a result of the overflow of the Carson River, not the Truckee, but the overflow from the farms allowed these marshes to continue these past eight decades.

But they are almost gone. I walk out in the middle of these marshes where just a few years ago you would have to take a boat. And the water fowl are almost gone.

But fresh water would mean so much to that area, and with $25 million, that is approximately what this will be, they will not be able to be brought back to their prior levels, where it was absolutely unbelievably fantastic what it did for that area, and especially what it did for the migratory water fowl. But it still will be salvageable. It will be able to remain.

But for this marsh in the middle of the desert, that's where it is, certain species of water fowl will simply disappear. Mallard ducks, for example, they would remain, but people don't know for how long, because this is so important to the mallard duck migration and many other water fowl. So the $25 million will go a long way toward saving the area. We would like to have more of it, but that certainly will help.

Senator **Bradley**. You know, I am struck by how much the future in western water is going to depend on improved efficiency in water use. And one of the water efficiency measures that has been suggested on many occasions, one of the small things, is water meters. I have heard that there is some opposition to installation of water meters in the Reno-Sparks area. Have you heard this, and what is your comment?

Senator **Reid**. I have never heard any opposition to water meters. [Laughter.]

Senator **Reid**. Mr. Chairman, this has been something that has been an issue in Washoe County, Reno area for a long time, and one of the most misunderstood items of this legislation is that it mandates water meters. The fact of the matter is the ultimate decision as to water meters is up to the people of Reno-Sparks. They are the ones that decide as to whether or not there will be water meters. And they have to decide whether or not the ultimate agreement is something that would warrant putting in water meters, because part of the negotiation is that as a water conservation effort there should be water meters within a decade.

And the interesting part about all this is it has been established, even preliminarily, that the developers who already pay, for lack of a better description, up the nose, for putting in new developments because they have to buy this water, the placing of water meters will basically be painless for the people of Reno. But that is easier said than done. The fact of the matter is it will be up to the people of Reno to make that decision.

Senator BRADLEY. If you were to identify the biggest benefit of this legislation to the Reno-Sparks area, what would you say?

Senator REID. I would say, Mr. Chairman, that it allows the cities of Reno and Sparks to maintain that they would have drought year storage so that they can look forward to at least the next 40 years to have adequate water in drought years to be able to flush their toilets and water whatever little lawns they have, anyway, just to maintain. That is all this allows.

Senator BRADLEY. And right now that is not the circumstance?

Senator REID. No. Right now, unless there is some real drastic things that nature creates in the next few months, this summer is going to be a very, very tough summer for the people in the Reno area. And as it so happens, I have studied the last few years' drought year patterns, and nature is very——

Senator BRADLEY. Fickle?

Senator REID. Fickle, that's right. You can have drought years five years in a row; you can have wet years five years in a row. But the fact of the matter is you have dry years because we are in a desert. And the population base now does not allow the leeway of having the luxury of saying well, we'll take care of it next year. When we have droughts now with that area of a quarter of a million people, they are going to feel it unless we allow drought year storage, which this legislation does allow. That's the most important thing in this legislation.

The second thing, Mr. Chairman, I must say is that to allow nature to fulfill what it provided 5,000 to 10,000 years ago, and that is the wetlands, so that we can continue to have a migratory pattern as we have had them since the existence of time.

Senator BRADLEY. Well, I won't get into the storage question with you because I know that we have Mr. Lawson later on, and I will ask him to explain that arrangement.

Let me thank all members of the panel for your testimony. Congressman Shumway, Congressperson Vucanovich, Senator Bryon, and Senator Reid, let me thank you also for making this happen.

Our next panel is witnesses from the administration. I would like all of them to come to the table: John Sayre, Assistant Secretary of Water and Science, Department of the Interior; Constance Harriman, Assistant Secretary for Fish and Wildlife, Department of the Interior; Eddie Brown, Assistant Secretary for Indian Affairs—Eddie, raise your hand—Rear Admiral Steven Briggs; Barry Hartman, Deputy Assistant Attorney General for Land and Natural Resources Division.

Let me welcome all of the Administration's representatives. Who is the man between Mr. Hartman and——

Mr. **Jones**. Mr. Larry Jones, sir, expert witness from the Fallon Naval Air Station, Environmental——

Senator **Bradley**. He is here to assist you, Admiral? Okay.

For these witnesses, I would like to read an excerpt from the committee rules. It says: "Each witness who is to appear before the committee or any subcommittee shall file with the committee or subcommittee at least 24 hours in advance of the hearing a written statement of his or her testimony." Now, the way we run this subcommittee is that we abide by the rules.

The testimony from each of the witnesses at the table now was not to the subcommittee until this morning. That is not consistent with the committee rules. At future hearings of this subcommittee I will expect you to abide by the committee rules, which require testimony 24 hours in advance. To be confronted with a pile of testimony, much of which might be common wisdom, but nonetheless to be confronted with it the morning of the hearing is just not acceptable.

I would ask each of the witnesses today to have their testimony submitted to the record as if it had been submitted not at the hearing but as an interested party. And I would ask each of the witnesses not to read your testimony but to summarize it. I will then proceed with questions. So each of you, give me your recommendations and limit it to five minutes.

Mr. Sayre.

STATEMENT OF JOHN SAYRE, ASSISTANT SECRETARY FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

Mr. **Sayre**. Mr. Chairman, I personally share your concerns about the timely submission of testimony. I apologize on behalf of the Department. I regret in this particular instance that we didn't meet the deadline. The process of writing and clearing the testimony is by definition a complex one, and I want to assure you it is our intent from now on to get this testimony here on time as required by your rules. Again, I wish to apologize on behalf of our department.

Senator **Bradley**. Let the record reflect that this bill was introduced in August, and the Committee asked for Interior's comments on this in December. So you have had sufficient time to get your testimony in 24 hours before the subcommittee meeting.

Mr. **Sayre**. Mr. Chairman, on behalf of my colleagues, Assistant Secretaries Harriman and Brown and myself, I want to thank the Committee for the opportunity to be here to present evidence—I am used to being a lawyer, I guess—to present testimony on the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. Assistant Secretary Harriman and Brown will address specific issues on the Fish and Wildlife Service and on the Bureau of Indian Affairs, and I will state some of the major concerns related to the Bureau of Reclamation operations and to the Department.

Mr. Chairman, the Administration cannot support the bill unless major concerns are addressed. These concerns are that it fails to achieve finality on the allocation of the Truckee River. It establishes a $75 million trust fund for the Indians that we believe is unjustified. We believe that there should be an environmental impact statement as a result of this bill. It will, we believe, affect many aspects including fish and wildlife, and water allocations of the Truckee irrigation district. We believe that there is no provision in here for any non-Federal cost sharing in connection with the acquisition of water for the wetlands and other environmental purposes, and that it imposes hidden costs to the government which I will address later on.

It is a real effort to solve a very long standing dispute. As you know, this litigation and these matters have been going on since 1913, and there are probably 12 or more cases in litigation. And we have to commend Senator Reid for his valiant effort to draft this bill. I think it is a constructive way to start. What we are saying is that as written we cannot support it, but we will certainly work with Senator Reid and the committee to try to carry out the thrust of this bill.

The bill does contain a lot of important concepts. And again, I want to congratulate Senator Reid. It has been hard to do. We support the interstate allocation of water between Nevada and California. We support the concept of using the reservoirs on the Truckee and Carson reservations to conserve and better utilize the available water. We commend the recognition in the bill, in Titles III and IV, of the importance of fish and wildlife resources. And also we commend the efforts to solve the Indian problems, although we likewise are concerned about the Fallon Indian Tribe.

We believe that it could be improved to better resolve the disputes among the area water users, and there are a number of major problems that we see. One is, for instance, this would settle perhaps five pieces of litigation. It leaves probably seven more still in litigation and perhaps another three that would have to be modified. So it does not resolve all of the litigation although I doubt if we can ever get to that point.

We particularly object to the restriction of the Secretary's ability to negotiate agreements required by the bill. It says negotiate, but it really practically mandates him to reach agreements. We believe that the Federal Government has major interests that need to be considered. We think the bill reduces his options, and we would like to work on redrafting that to see if we could improve that situation.

We also have a feeling that in this bill the Federal Government is allocating the water of the river, which we believe is a matter of concern to both California and Nevada. We believe in State primacy that these water rights should be allocated and distributed according to State law.

We don't want to see this bill interfere with the OCAP, the operating criteria. I think that it makes an attempt to do this. We want to be sure that it will not interfere with that. The procedure, of course, has been subject to a lot of litigation and is still, I guess, on appeal. We want to protect the Alpine and the Orr Decrees on the Truckee and the Carson Rivers.

We, likewise it will be brought up by Ms. Harriman, are concerned about the T–J Drain that is polluting some of the wetlands. We think that we should address that issue. We have concerns about the Preliminary Settlement Agreement in that it would hamper the Secretary's ability to comply with the Endangered Species Act by delegating to a non-Federal entity control over the water needed to sustain those species. That particularly is true, I think, of water in Stampede Reservoir. We could be held liable for damages—the Federal Government could—and this is of concern.

We are also concerned that the Operating Agreement does not address the interest of the various entities that operate the storage facilities. The $16 million may not be sufficient to acquire water for the wetlands. We think there may be some alternatives to that that should be considered in that it might be as much as $55 million that is needed to do this. We would li~~ke to dis~~cuss this in more detail.

We realize that around the City of Fallon there is arsenic in the water in residential areas, and we need to address some of those problems. We think that the Newlands project should be reauthorized, probably to include fish and wildlife and industrial purposes other than irrigation. The bill requires that Stampede Reservoir—and maybe some of the other reservoirs, particularly Stampede—be used for unauthorized purposes. At the present time it is only to be used for fish and wildlife purposes. The Warren Act prohibits the use of that reservoir for other than irrigation, and we think we need legislation to clarify that. In the Preliminary Settlement Agreement the reservoir is also being used to store some of the Sierra water for drought purposes for the cities.

We are opposed to the $75 million trust fund for the Pyramid Lake Paiutes. We are pursuing in the Department a policy of working these out by Indian settlement agreements by involving all the parties of interest. This trust fund is not the best way to go because it is inconsistent with the administration's policy on settling Indian water rights claims.

We believe that there are some hidden costs that have to be addressed that are not included, like the Truckee River fishery rehabilitation recovery plan, the cost for replacement water, various operating and storage charges like on Stampede, and possible replacement costs for lost hydropower.

Senator BRADLEY. Okay. Do you ~~want to~~ sum up now, Mr. Sayre?

Mr. SAYRE. In essence, what I am saying is that we think that we can't support the bill as written. We are very willing to sit down and work with Senator Reid and the committees to try to resolve some of the problems that are of concern to us. I think that there are many problems with this bill. We are really worried that the Federal Government is intruding upon the State primacy in water rights.

Senator BRADLEY. Ms. Harriman.

STATEMENT OF CONSTANCE HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Ms. HARRIMAN. Good morning.

Senator BRADLEY. Good morning. Welcome. Try to limit your testimony to five minutes.

Ms. HARRIMAN. Yes. I would like to apologize also for your not receiving my testimony in a timely fashion, and hopefully it won't happen again.

Mr. Chairman, the administration cannot support this legislation unless numerous concerns are addressed. We do, however, support the goals of S. 1554. With amendments, the bill would provide the Secretary with welcome new authorities, in addition to his existing authorities, to conserve Pyramid Lake fishes and to restore critical wetlands at the Stillwater National Wildlife Refuge.

We recommend amendments to address the following concerns. First, under section 201 of the bill, we do not know what impacts the Preliminary Settlement Agreement and its related Operating Agreement would have on the recovery of Pyramid Lake fishes. To comply with his responsibilities under the Endangered Species Act, the Secretary should have the ability to disapprove either agreement if it is detrimental to these fishes.

Second, funds are authorized under section 301 to purchase water rights for wetlands. We estimate that it would take between 50,000 to 60,000 acre-feet of acquired water to maintain wetlands at Stillwater. In addition, we believe the bill should provide the Secretary with adequate flexibility to determine appropriate acquisitions pursuant to this authority.

Third, if lands currently managed for wildlife benefits are withdrawn from the Newlands project and transferred to the National Wildlife Refuge System, they may not be eligible to receive project water. Therefore, in section 302 the authority to deliver project water through the project's delivery systems to the refuge should be affirmed.

Fourth, no funding is authorized under the draft bill to implement the required recovery plans for listed fishes of Pyramid Lake. Section 402 should be amended to authorize funding to implement recovery tasks. If any Pyramid Lake Indian tribal development funds are authorized under Title V, a portion of them should be allocated for recovery tasks. In addition, the Secretary's water rights purchase authority should be expanded to include recovery of Pyramid Lake fish.

Fifth, under section 601, we are concerned that implementation of unfulfilled obligations to the Fallon Tribe may adversely affect threatened and endangered fishes of Pyramid Lake. We affirm the tribe's rights to water entitlements, but we recommend that any expansion of irrigated lands on the Fallon reservation not exceed the projected target suggested by the Secretary in his 1988 record of decision for the Newlands Project Operating Criteria and Procedures.

Sixth, and finally, section 602(b) might eliminate the Anaho Island National Wildlife Refuge, an island located in the middle of Pyramid Lake. The bill should be amended to clarify that the refuge would be excluded from the lands over which jurisdiction is given to the Pyramid Lake Indian reservation.

Mr. Chairman, another issue not addressed by S. 1554 which needs to be recognized is contaminated agricultural drain water from the T-J drain enters the Stillwater Wildlife management area from the Fallon Indian reservation. We believe S. 1554 should address this problem.

Although we affirm the integrity of current operating criteria and procedures for the Newlands project, the bill should recognize that after secretarial approval of the Preliminary Settlement Agreement and Operating Agreement, and other storage and diversion approvals, OCAP and its impacts may have to be reevaluated.

Other issues that remain unresolved in sections 101, 102 and 103 of S. 1554 include the need to confirm existing divergence from the Carson River in excess of the Alpine Decree, and the need to prevent increasing diversions from the Truckee River that would adversely affect listed fishes of Pyramid Lake and wetlands in the Lahontan Valley.

In conclusion, we would like to point out several potential hidden costs to the U.S. Fish and Wildlife Service posed by S. 1554. First, related to cui-ui recovery, there is no provision in the bill for probable recovery costs, which include delta passage, rehabilitation of the lower river, and purchase of water rights. Related to the T-J drain, the cost of closing or modifying the drain to deal with the contaminated agricultural drain water is likely to be considerable. Third, and finally, related to property damage, the Preliminary Settlement Agreement mentions the storing of fish credit water in Lake Tahoe, which could cause higher water levels and increase wave action damage to private property along the lake.

This concludes my remarks, Mr. Chairman. I would be glad to answer any questions you may have.

Senator BRADLEY. Thank you very much, Ms. Harriman.

Mr. Brown.

STATEMENT OF EDDIE F. BROWN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. BROWN. Yes, Mr. Chairman, I am pleased to be here this morning to set out my views as Assistant Secretary—Indian Affairs in regards to the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. According to your instructions, I will summarize my statement.

I recognize that S. 1554 reflects a major effort on the part of many of the local parties in conjunction with Senator Reid and his staff, and members of the staff of the subcommittee. It is an effort worthy of our support and a worthy goal. However, I cannot support S. 1554 until at least two areas have been addressed.

First, it is not sufficiently clear that the provisions of S. 1554 are compatible with the Department's Operating Criteria and Procedures, known as OCAP, for the Newlands Reclamation Project. The OCAP are the cornerstone of the Secretary's ability to preserve and to enhance the trust resources of the Pyramid Lake Tribe. OCAP recognizes that the United States is the trustee for the Indians. It recognizes that to be put into effect, this trust responsibility is vested in the Secretary of the Interior.

OCAP recognizes that it is in the national interest that the fish resources of Pyramid Lake be restored. And it recognizes, and here I quote, ". . . that the regulations will initiate departmental controls lacking in the past to limit diversions by TCID from the

Truckee River within decreed rights, and thereby make additional water available for delivery to Pyramid Lake." The integrity of OCAP must be assured. At this juncture, without greater examination, it is not prudent to assume that the aggregate impacts of the hydrological changes called for by S. 1554 would be compatible with the Department's OCAP.

Second, the provisions of the bill direct the Department to initiate settlement negotiations with Fallon Paiute-Shoshone Tribe within certain parameters. The Department, through its working group on Indian water settlements, has already initiated settlement talks with Fallon Tribe. The Secretary's negotiating discretion and search for solutions with the Fallon Paiute-Shoshone Tribe should not be limited by the revisions of this bill.

In addition to the wetlands mentioned in Title III, there are also wetlands on the Fallon Indian reservation which must be addressed by the bill. The Fallon wetlands are not only important to the Fallon Tribe, but to the total wetlands ecosystem.

Finally, although the Department cannot support the tribal development fund proposed in Title V of the bill, as trustee we do support the Pyramid Lake effort to improve and enhance the cui-ui and Lahontan cutthroat trout in Pyramid Lake. To that end we recommend that the Tribe be consulted and involved in the studies for the recovery plan mandated in Title IV, and that the Tribe be given the responsibility and provided the resources to implement the recovery plan.

This concludes my prepared testimony, and I will be happy to answer any questions that the Committee might have.

Senator **Bradley**. Thank you very much, Mr. Brown.

Now, Admiral Briggs.

STATEMENT OF REAR ADMIRAL STEVEN R. BRIGGS, U.S. NAVY COMMANDER, LIGHT ATTACK WING, U.S. PACIFIC FLEET, ACCOMPANIED BY LARRY JONES, NATURAL RESOURCES SPECIALIST, NAVAL AIR STATION, FALLON, NV

Admiral **Briggs**. Mr. Chairman, I join in the apology for late submission of our statement, and I thank you for the opportunity to testify today concerning S. 1554, which would resolve several but not all of the water issues which have arisen between the States of California, Nevada, and within the State of Nevada.

As I noted previously, Mr. Larry Jones, who has been a Natural Resources Specialist at Naval Air Station, Fallon for the past 16 years and who is responsible for water and agricultural outlease programs is here with me.

As previous administration witnesses have noted, the administration cannot support S. 1554 unless major concerns are addressed, and we in the Defense Department certainly defer to the Departments of Justice and Interior for the specifics of those objections. Department of Defense, however, supports the water efficiencies of S. 1554 and applauds the efforts of Senator Reid, this subcommittee, and all the participants to address these long standing issues.

The vast majority of S. 1554 is well beyond the purview of DOD, but certain sections, specifically 401, 402 and 603, could be improved to ensure rapid, effective implementation of some of the goals of S. 1554 with respect to the Department of the Navy. Those sections specifically impact operations at NAS Fallon, Nevada, located in Churchill County on the outskirts of the city. NAS Fallon is the sole site in the United States where the Navy conducts entire carrier airwing tactical training. The resultant intensive jet aircraft operations at NAS Fallon demand preservation of compatible environmental conditions.

These conditions, such as land use which provides for abatement of dust, that can impact the flight patterns, suppression of the potential environmental foreign object damage, or FOD, to the aircraft engines, and establishment and maintenance of a fire safety buffer around the air station, are primary concerns. And those concerns are specifically addressed in section 401 of the Bill. However, the Bill in its current form specifically appears to walk away from an agricultural outlease program for the land or buffer zones surrounding the air station.

I would like to briefly go through that outlease program. We are talking about some 3,874 acres that we have had for 35 plus years. Approximately 2,874 of those acres are water-righted for an entitlement of about 10,000 acre-feet of water. Lease holders, typically on five-year leases since the mid-50s, have maintained these buffer zones in an agricultural program, growing alfalfa and such, to maintain the fire break, keep down the dust, and reduce the agricultural foreign object damage potential. The drain and seepage water from those lands now flows to the Stillwater Natural Wildlife Refuge and Stillwater Wildlife Management Area, as we have discussed, recharges the basalt and shallow aquifers that supply drinking water in the region, and feeds the Carson Lake pasture wetlands to the south.

S. 1554 seems to foreclose on this option. However, it does address the dust abatement and fire safety requirements. Our particular concern is the elimination, it would appear, of a Navy proposed ten year long lease contract program wherein at the outset we would reduce by some 20 percent the water that would be required to maintain those buffer zones. By the beginning of the third year the required water conservation measures in those leases would be in place, such as irrigation ditch lining, modernized water flow control devices, increased laser land leveling, which would result in an additional 10 percent savings for a total of 30 plus percent savings, some 3,320 acre-feet of water that could be allocated elsewhere.

Though certainly S. 1554 should rightfully eliminate the current one year lease program that we have been in in the last four to five years due to litigation and the ongoing discussions that led up to S. 1554, we would hope that some adjustment could be made to S. 1554 to permit the Navy to present the Department of the Interior such a plan for approval as the most water efficient means of properly maintaining the buffer zones.

In conclusion, Mr. Chairman, the Department of Defense supports the water efficiency objectives of S. 1554, but believes some sort of outlease program at NAS Fallon could be a better way to achieve the water efficiency goals. We would regret the summary foreclosure of this option and would be most anxious to work with the subcommittee members and staff toward this end, and would be glad to answer any questions.

Senator BRADLEY. Thank you very much, Admiral Briggs.

Mr. Hartman.

STATEMENT OF BARRY M. HARTMAN, DEPUTY ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE

Mr. HARTMAN. Thank you very much, Mr. Chairman. We too apologize for the lateness in submitting our testimony, and I assure you I will send your message back to the Department and do my level best to make sure that doesn't happen again.

I am Barry Hartman, a Deputy Assistant Attorney General in the Land and Natural Resources Division of the Department of Justice. We too support the goals of S. 1554, but believe that several significant changes must be made before we can support the bill.

I should point out that, as the lawyers who are involved in handling litigation in this case, we believe the settlement of these cases would be an excellent idea so that we don't commit yet a fourth generation of lawyers to litigating some of these issues. In an effort not to repeat some of the objections raised by the Department of the Interior and the Department of the Navy, I will try to limit my remarks to only those that hopefully have not been raised, in order to save the time of the Committee.

First, under Title I, and it has been referred to earlier, we understand an amendment will be submitted which would provide for a specific allocation of the Truckee River which we believe is absolutely necessary in this bill.

Second, we believe that with respect to enforcement of the alleged violation of the interstate allocations, that enforcement should not be negotiated by the parties, but rather should be in the hands of the Federal district courts who have jurisdiction over this matter. And that should be made clear in the bill.

With respect to Title II, that Title seems to implement or require the Secretary of the Interior, and this has been mentioned, to implement the Preliminary Settlement Agreement. We believe that is inappropriate and inconsistent with the concept that an Operating Agreement for the entire Truckee River is to be negotiated by the interested parties, and would only unnecessarily and inappropriately limit the discretion of the Secretary to negotiate that on behalf of the interests that the Secretary represents.

With respect to Title III we believe that Federal wetlands expenditures should be conditioned on some non-Federal cost sharing. And we also share the concern expressed earlier that the $16 million which has been appropriated may or may not be enough, but we believe it should be set, at least as an outside limit under this bill.

With respect to Title IV, the Department of the Navy I think has presented its views and we won't repeat them at this point other than to note that Title IV should recognize the difference between the endangered cui-ui and the threatened Lahontan cutthroat trout. There is a difference under the law, and we believe it should be recognized specifically in this bill.

And finally, with respect to Title VI, we believe that the terms provided in Title VI for settlement of litigation are not as clear as they should be. We laud the goal of settling the litigation, and we believe language can be developed which will clearly and unequivocally settle some of these cases. We would be perfectly willing and capable of working with the subcommittee, as well as the other departments, obviously, in trying to reach those goals.

Thank you very much.

Senator BRADLEY. Thank you very much, Mr. Hartman, and let me thank the whole panel. Mr. Hartman, do you have any idea what the Federal Government has spent on litigation on the Pyramid Lake fisheries?

Mr. HARTMAN. Mr. Chairman, I have no idea. The litigation goes back to I believe 1914, when we first sought to settle water rights. I can't answer that question. I can try to find out.

Senator BRADLEY. Is there any way you could provide that for the record?

Mr. HARTMAN. If there are records that go back that far, I will do my best.

Senator BRADLEY. Try it to 1970. You don't have to go back to 1914. I would like to have that number if I could. Mr Hartman, do you have any suggestions for steps that we could take to resolve the litigation between the TCID and the Pyramid Lake Indian Tribe? I urge you to be creative. It is better to be silent if you are going to say what everybody in the room knows. So if you are going to say something creative, then say it.

Mr. HARTMAN. I'm not sure I can present something creative at this point. I share the concern that it would be nice to settle those cases as well, although it seems that the positions that have been taken in the litigation make that exceptionally difficult. I do know that, to the extent the Secretary of Interior through the OCAP regulations is permitted to develop management techniques, and in the current litigation with TCID we are successful, as we believe we will be in rebuffing TCID's attempts to challenge the settlement, I am not sure what I can suggest at this point. I would like to think about it. If I can suggest something, I would love to be able to do so.

Senator BRADLEY. All right. Although this legislation isn't ratifying the interstate compact, per se, do you have any concern that this approach in any way diminishes the certainty that attaches to the division of water between California and Nevada?

Mr. HARTMAN. If you are asking whether this particular legislation would constitute a sufficient authorization by Congress for an interstate compact, I believe the answer is it would, as a technical constitutional matter. Whether the ratification occurs before or afterwards has never really been an important issue. There is, of course, the important issue of the parameters of that agreement, and to the extent the legislation is currently drafted, for example as it relates to the Truckee River, doesn't provide any parameters for the scope of that agreement. I think it would be relatively unprecedented, but it certainly, as far as we can tell in initial review, would not be unconstitutional.

Senator BRADLEY. And it would provide certainty?

Mr. HARTMAN. I believe it would, yes.

Senator BRADLEY. Okay. Mr. Sayre, do you believe that this bill violates State water law in California or Nevada?

Mr. SAYRE. Certainly it imposes an allocation of the waters, and it doesn't address some of the distribution problems. The Preliminary Agreement, as I understand it, although I have not really had an opportunity to study it, may well violate some of the provisions. The transfers that are discussed from the Fallon Indian area over into the Pyramid Lake, may well violate the agreement. I think you just have to study each part of it to accurately define——

Senator BRADLEY. Just for the record, give me three or four places that you think it violates State water law, and in which State.

Mr. SAYRE. I think that we have always taken the position that the allocation of water supplies within a State are within the prerogative of the State. This bill make an allocation, I think. The interstate agreement, of course, if we had one, would help that.

Senator BRADLEY. Can you point out any place where this violates State water law? Be specific: any place that this bill violates either Nevada or California State water law?

Mr. SAYRE. The one I specifically can is the transfer of the water from the Fallon, from the Carson River over into the Truckee River, which is made without complying with State law.

Senator BRADLEY. So you say that that transfer does not comply with Nevada State law?

Mr. SAYRE. I don't believe it does. First I want to say, however, that I am not expert on California or Nevada water law. But I believe that the transfer should go through the courts of Nevada.

Senator BRADLEY. Okay. You said that you thought that the $16 million, really the $25 million with local effort, wouldn't be enough for the purchase of water rights. You said that you thought that it would be $55 million.

Mr. SAYRE. This is what I had been advised, that it probably will cost about $1,000 an acre-foot. And as I understand the need, 55,000 acre-feet of water to adequately——

Senator BRADLEY. You said you would like to work with the Committee and offer suggestions. Where should that money come from?

Mr. SAYRE. I think that this is one that the States should help cost share. The Federal Government probably has some obligations, but I think the States should try to share some of that cost with the Federal Government. The other thing I suggested, however, that may be of interest, is that it is possible that the Newlands project could be rehabilitated, and save perhaps as much water by rehabilitation, by lining of canals and things, that it may produce water that is not needed for the Newlands project that would be available for the wetlands. And I have been advised that that probably could be done but at considerable cost.

Senator BRADLEY. So you could reallocate savings, you would advocate reallocating savings through water efficiency to this purpose——

Mr. SAYRE. Yes, water efficiency.

Senator BRADLEY. Would you put that in the bill?

Mr. SAYRE. Yes. Well, I would like to give them the alternative in the bill of considering the rehabilitation of that project to save water, and better water efficiency, as well as having to go out and buy it where we may not have willing sellers.

Senator **Bradley**. With regard to your concern that the bill might violate Nevada water law, were you aware that Senator Reid introduced an amendment to S. 1554 in November that would provide that the water transfers authorized must be made in accordance with Nevada law. May I assume that once that is done, you don't have any problem? Is that it? I mean, you said you thought the Fallon Air Station water transfer was a problem. Senator Reid's amendment will make sure it happens in accordance with State law.

Mr. **Sayre**. I am not familiar with the amendment. I was unaware of it.

Senator **Bradley**. But other than Fallon you can't think of any other places that it violates the State law?

Mr. **Sayre**. Well, not off hand.

Senator **Bradley**. What about your suggestion——

Mr. **Sayre**. I wonder if I could supplement the record by checking on that and submit written testimony on that?

Senator **Bradley**. I would prefer you call me on the phone and let me know.

Mr. **Sayre**. All right, I will do that.

Senator **Bradley**. Could you tell me your ideas on how to address the TCID issues?

Mr. **Sayre**. I really don't know, because——

Senator **Bradley**. You mean for 20 years——

Mr. **Sayre**. Given the stance that both parties have taken on this, it is very difficult to force an agreement.

Senator **Bradley**. So basically the Department of Interior here takes a pass?

Mr. **Sayre**. No, I think we should try to facilitate it if we can.

Senator **Bradley**. Well, how? That's what I'm asking. You've had 20 years here in which both the Pyramid Lake Indians and the Newlands project have not been able to get together. And the Department of Interior has essentially presided over this problem the whole time. I am not mentioning the loss of Lake Winnemucca, I have not mentioned where you were with the *Orr Ditch* decree, I have not mentioned any of the other things where the Department of Interior, one might say, has not had a stellar record. But just on this issue.

Mr. **Sayre**. I do not know all the efforts that have been made by the Department. I think it might be worth a chance of sitting down with the two of them and seeing if there is any possibility of bringing an agreement together. I don't have high hopes, but maybe we could.

Senator **Bradley**. One of the things that was puzzling to me was that, and maybe I heard wrong, but is there unanimity on the panel in support of OCAP? Is there unanimity, because Ms. Harriman said it may have to be reevaluated, you seem to back OCAP 100 percent, Mr. Brown seemed to back it 100 percent. Is there unanimity that OCAP is the holy grail?

Mr. **Sayre**. I would say that we have gone this far and we have a court decree that upholds the OCAP. We want to try to preserve what we have. It goes a long way in trying to allocate the water to

Newlands and to institute efficiencies that will preserve some additional water supplies for the wetlands. OCAP doesn't do it all, but we sure want to preserve what we have.

Senator BRADLEY. Now, Mr. Sayre, as someone who backs OCAP 100 percent, are you aware that TCID does not support——

Mr. SAYRE. No, they are the ones who have litigated it, that is correct.

Senator BRADLEY. If this is so important, how are you going to resolve this issue if you allow TCID to continue to oppose OCAP?

Mr. SAYRE. If they oppose OCAP I would hope that the appellate court would sustain it. I think that then there is a court order that this is the way it is going to go.

Senator BRADLEY. So your answer is basically this is an issue for the courts and we can't really resolve this issue legislatively, so don't even try.

Mr. SAYRE. I would say that, yes.

Senator BRADLEY. Is that an argument then for the Committee to act directly with regard to TCID?

Mr. SAYRE. I don't understand that, sir.

Senator BRADLEY. Is that an argument for the Committee to deal with TCID?

Mr. SAYRE. No, I think it's an argument for the Committee not to deal with TCID on the OCAP, that the court will ultimately make a decision on that.

Senator BRADLEY. And you don't have any other suggestions about how to resolve it?

Mr. SAYRE. No, not at this time. This is a very complicated matter, as you know, on the whole Truckee-Carson matter.

Senator BRADLEY. I understand. It is so complicated that for 50 years it has defied your best efforts. Let me ask you, all three of the Interior Department's divisions here received a consultant's report in, I think, August 1987 that detailed a wide variety of operational and structural changes that could be made in the Newlands project to increase efficiency and decrease water use. Are you familiar with that report?

Mr. SAYRE. I am not familiar with it.

Ms. HARRIMAN. No.

Senator BRADLEY. Are you familiar with it, Mr. Brown?

Mr. BROWN. No, Sir.

Senator BRADLEY. It is something fairly central. But you have no knowledge about this?

Mr. SAYRE. I have no knowledge about it.

Senator BRADLEY. Do you have any thoughts about the ways to reduce and improve water usage and improve efficiency of the Newlands project?

Mr. SAYRE. One thing was to perhaps rehabilitate the project.

Senator BRADLEY. Let's take the report and make your suggestions. Are there operational changes, and then are there structural changes? And, given your experience, offer us your view as to the operational changes that could improve efficiency, and the structural changes that could improve efficiency.

Mr. SAYRE. One of the operational changes, and it certainly is not inclusive, might be to reauthorize the project for other uses besides irrigation, which would permit the water to be used for purposes other than irrigation. The second one would be structural, to perhaps line the ditches and try to efficiently save water that is now going into the groundwater. But we could save water that way.

Senator BRADLEY. So you would say that you should do it structurally as well as operationally?

Mr. SAYRE. Yes.

Senator BRADLEY. Let's take the Derby Dam. Does it leak?

Mr. SAYRE. It leaks.

Senator BRADLEY. How much would it cost to fix it?

Mr. SAYRE. I have been advised that it would cost about $5 million.

Senator BRADLEY. Who advised you it was $5 million?

Mr. SAYRE. The Bureau of Reclamation.

Senator BRADLEY. What about the Truckee Canal? Does it leak?

Mr. SAYRE. Yes.

Senator BRADLEY. How much would it cost to fix it?

Mr. SAYRE. I have been told about $1,000, I mean about $1 million a mile, or $10 million, for the first ten miles of it, from the Derby Dam down.

Senator BRADLEY. What about the V-Line Canal?

Mr. SAYRE. The V-Line? I am unfamiliar with that.

Senator BRADLEY. You are unfamiliar with it? You might want to talk to the Bureau. Do you know if TCID uses differential pricing?

Mr. SAYRE. I do not know.

Senator BRADLEY. You do not know?

Mr. SAYRE. I do not know.

Senator BRADLEY. In the Newlands project, what is the size of the land parcels that receive this water?

Mr. SAYRE. Pardon me?

Senator BRADLEY. The size of the land parcels that receive the water.

Mr. SAYRE. In the Newlands?

Senator BRADLEY. Yes, the Newlands project.

Mr. SAYRE. I understand it is around 60,000 acres.

Senator BRADLEY. How much of the water goes to areas of 40 acres or less?

Mr. SAYRE. I do not know that answer. I can find it for you.

Senator BRADLEY. Try 89 percent. How much go to parcels of five acres or less?

Mr. SAYRE. I do not know.

Senator BRADLEY. Would it shock you if 70 percent went to parcels of five or less?

Mr. SAYRE. I don't know whether it shocks me or not.

Senator BRADLEY. Let me ask you this. At what stage does a farm become a house with a big yard? Five acres? Ten acres?

Mr. SAYRE. I suppose it is what they do with it. I suppose it is what they do with the five acres. I can see if you are growing vegetables and things like that, you might consider that as a small farm. If it is planted in grass, why, it would be a residence.

Senator BRADLEY. Senator Conrad, would you like to ask any questions?

Senator CONRAD. Well, after the answers the Chairman has received I am not sure I want to dive into that pool. Mr Sayre, let me ask you this. Was there ever an attempt by your office or predecessors in your office to bring the parties together and to try to work out a negotiation?

Mr. SAYRE. I cannot answer that. I do not know. I would be willing to answer that question by supplementing it in the record.

[The information was not received at the time of printing.]

Senator CONRAD. I would be interested, Mr. Chairman, if we could get some history on this. It would seem to me that it would be the responsibility of those in that position to bring together the two parties at some point to see if some negotiated settlement couldn't be arrived at. Do you disagree or agree with that?

Mr. SAYRE. I think it is. We have the BIA that would certainly be interested in that, and we are interested from the Bureau of Reclamation standpoint. We certainly would be willing to sit down and work together to try to work it out if possible. You are talking about the Pyramid Lake Tribe and the Newlands district?

Senator CONRAD. Right. Do you have a planning process in which you sit down at the beginning of a year and outline what it is you are going to seek to do for the next year? Do they have that planning process?

Mr. SAYRE. I know the Bureau of Reclamation has that process.

Senator CONRAD. Does your office have that process?

Mr. SAYRE. We usually try to supervise and review what they have done. We do not do it ourselves. Each of the bureaus tries to handle their own programs, and I know that the Bureau of Reclamation is at the present time trying to sit down and work out their program for the coming year.

Senator CONRAD. It would just seem to me, no matter what the office is, that you would have some planning process by which you would set out what the work load is going to be for the year and the things you are going to try to accomplish. And if there is not such a system, that such a system be instituted. I don't know how else you kind of determine what you are going to do for the year. And that this be put on the list of those things that need to be worked on to attempt to get resolution.

Mr. SAYRE. We do prepare 90 day agendas and one year agendas.

Senator CONRAD. Is it on a one year, for example, the one year agenda to bring these groups together?

Mr. SAYRE. No, it is not at the present time.

Senator CONRAD. But it could be put on that agenda?

Mr. SAYRE. Yes, it could.

Senator CONRAD. I would urge that that be put on the agenda, and that there be an attempt here to bring the people together and see if it can't be resolved. I mean, otherwise it is going to get resolved either here or it's going to get resolved in the courts, which is an unfortunate way to resolve things if they could be done through a negotiated settlement.

Thank you, Mr. Chairman.

Senator BRADLEY. Thank you, Senator Conrad. Mr. Sayre, as I recall from the confirmation hearings, you have been an officer of the National Water Resources Association for a long while. Is that correct?

Mr. SAYRE. That is correct.

Senator BRADLEY. You were President from 1984 to 1986?

Mr. SAYRE. Yes, for two years.

Senator BRADLEY. Who was the Nevada representative at that time?

Mr. SAYRE. Lyman McConnell came on the board after I was President. I was trying to think of his name, but has slipped my mind right now. I can't tell you without going back.

Senator BRADLEY. You can't recall?

Mr. SAYRE. I can't recall. I picture him in my mind, but I can't tell you his name.

Senator BRADLEY. During your tenure, was this issue ever raised, the Truckee and Carson Rivers?

Mr. SAYRE. Not to my knowledge.

Senator BRADLEY. Never raised?

Mr. SAYRE. No.

Senator BRADLEY. So you never had any occasion to discuss it with anyone, the Nevada representative or anyone else?

Mr. SAYRE. Not while I was President. Just before I left the board last year Mr. McConnell had a problem about some language.

Senator BRADLEY. Who is Mr. McConnell Mr. Sayre?

Mr. SAYRE. Mr. McConnell is sitting right over there, and I think he is the manager of the Truckee——

Senator BRADLEY. He is the manager of TCID?

Mr. SAYRE. Yes, but it didn't go to any of these specific issues.

Senator BRADLEY. Ms. Harriman, fish and wildlife concerns all across the West are of increasing importance. There have been some positive developments in North Dakota and in the Columbia River, and a number of other places. Yet there is a kind of disturbing similarity to me, having spent a couple of days out in California with some field hearings, between Stillwater and Kesterson. Do you see some similarities there?

Ms. HARRIMAN. Yes, I do. The problem is with the agricultural drain water, certainly, and the contaminants.

Senator BRADLEY. Do you think it is good policy for wetlands and wildlife refuges to have to depend upon agricultural drainage for water?

Ms. HARRIMAN. I think what is important is that the wetlands be sustained, and however that may best be accomplished under the circumstance. If the drain water is contaminated, as I pointed out in my testimony about the drain water in the T–J dam, certainly I think every effort should be made to pursue other alternatives, such as acquiring clean water.

Senator BRADLEY. Would you be in favor of water rights for wetlands?

Ms. HARRIMAN. As I said in my testimony, the service supports the acquisition of water rights to provide water both for wetlands and for the recovery of the listed fishes in Pyramid Lake.

Senator BRADLEY. But as a general proposition——

Ms. HARRIMAN. I prefer to talk about specifics, if you don't mind.

Senator BRADLEY. Can you give me some other places in the West where this problem of drainage water has led to water quality problems at refuges?

Ms. HARRIMAN. Today I can't really give you an answer I will be happy to provide you with a list later for the record.

Senator **Bradley**. Would you say that Tulare Basin was one of them?

Ms. **Harriman**. I don't know.

Senator **Bradley**. Would you say Salton Sea was one of them? Would you say Imperial National Wildlife Refuge was one of them?

Ms. **Harriman**. I don't know.

Senator **Bradley**. Would you say Ouray National Wildlife Refuge was one of them?

Ms. **Harriman**. I don't know.

Senator **Bradley**. Would you say the Kendrick project was one of them?

Ms. **Harriman**. I don't know.

Senator **Bradley**. Would you say Bosque del Apache was one of them?

Ms. **Harriman**. If you would like to give me the list I will provide you with a response for the record.

[The information follows:]

The following list provides examples of other places in the west where Federal water has been used to restore wetlands which have been found to contain contaminants.

Arizona: Cibola, Havasu, Imperial

California: Grasslands, Salton Sea, San Luis, Tijuana Slough, Butte Sink, Colusa, Delvan, Sacramento, Sutter, Lower Klamath, and Tule Lake.

Colorado: Browns Park.

Idaho: Bear Lake.

Montana: Benton Lake, Bowdoin.

Nevada. Stillwater.

New Mexico: Bitter Lake, Bosque del Apache.

Oregon: Malheur.

Texas: Laguna Atascosa.

Utah: Ouray.

Senator **Bradley**. This is a major issue under your jurisdiction. If you have drainage water that is leading to ecological catastrophes, you ought to know where they are. That is the first step to being able to deal with them. Do you have any thoughts about the status of the migratory waterfowl populations using the Pacific Flyways? I'll let you move away from that, so we are out of the specific and now to the more general.

Ms. **Harriman**. I am not sure I understand your question.

Senator **Bradley**. What would you say is the status of the migratory waterfowl populations using the Pacific Flyway? Are they up? Are they down?

Ms. **Harriman**. In general they are down across the country.

Senator **Bradley**. And how do you, given your responsibility, suggest that we deal with them?

Ms. **Harriman**. Again, I think there are a variety of approaches that we consider. I think the bill that was recently passed by the Congress and signed by the President to implement the North American Waterfowl Management Plan is one very important step. I think that much work needs to be done. I think the fiscal year 1991 budget recognizes this, and I think much work needs to be done in the area of research on wetlands, acquisition of wetlands, and restoration of wetlands. I think that is a key part of any solution.

Senator **Bradley**. Specifically with the Lahontan Valley wetlands, is there anything that you could suggest in addition to water right acquisition that would benefit the wetlands?

Ms. **Harriman**. Well, as Mr. Sayre mentioned earlier, I think some attention should be paid to increasing efficiencies in the Newlands project.

Senator **Bradley**. What about reduced grazing? Would that be helpful?

Ms. **Harriman**. I don't know.

Senator **Bradley**. Could the Navy be helpful?

Ms. **Harriman**. Possibly.

Senator **Bradley**. Well, let me say that this is a less than satisfactory series of responses from the Department of the Interior on an issue area that involves most of the key problems facing western water policy, certainly problems facing the bureau, the "new" bureau, that is. I had hoped that you would be able to be a little more forthcoming in trying to resolve these problems and, absolutely, in preparing for a hearing.

These people have come here all the way from Nevada and California not just to get their statements in the record, but hear what your thinking is on the issue, in a public forum, to see how well you have thought ahead on the major issues that are affecting them. Neither our guests nor I have heard that today, and I, for one, am less than pleased.

Senator, would you like to, Senator Conrad?

Senator **Conrad**. I think you have said it all.

Senator **Bradley**. As we wrap this up, let me give you a copy, Mr. Sayre, of the recommended improvements in the operations of the Truckee-Carson Irrigation District to increase efficiency and conserve water. You can Xerox it and distribute it.

Mr. **Sayre**. I would appreciate that.

Senator **Bradley**. Thank you very much. That will be all. The next panel consists of the States of California and Nevada. David Kennedy, Director of the Department of Water Resources, State of California, and Cecilia Colling, Executive Assistant to Governor Bob Miller, State of Nevada. Let me welcome both of you to the hearing, and you did come a long way, and I know that you know more about this than the previous panel appeared to know about it. And I welcome you to the hearing.

What I would like to do to continue to try to meet our time schedule, is I would like to, if I could, limit your prepared testimony to five minutes so we can have maximum time for questions. So, if you could summarize that would be wonderful.

It is good to see you again, Mr. Kennedy. It was a very productive time I had in California, and I appreciated all of the work of the Department in trying to facilitate my learning process.

Mr. **Kennedy**. We appreciated your taking time to go out there.

Senator **Bradley**. And Ms. Colling, you are very welcome today, and we hope you will convey my regards to the Governor.

Ms. **Colling**. I certainly will, thank you.

Senator **Bradley**. Mr. Kennedy.

STATEMENT OF DAVID N. KENNEDY, DIRECTOR, DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA

Mr. KENNEDY. Thank you, Senator. For the record, I am David Kennedy, Director of the California Department of Water Resources. We have taken the opportunity of your invitation to submit a rather lengthy statement for the record, and I will not repeat that here.

I would also like to call attention to we have an attorney here who represents four districts from California, Adolf Moscovitch, who has also submitted a statement for the record, and he would be available to answer questions if you would like, Mr. Chairman.

I think that the members of the Congress who have testified earlier, and in your opening statements, Mr. Chairman, you have summarized very well where we have come from and what a long, torturous path we have taken to get to this point. We in California appreciate very much the efforts of Senator Reid and his staff in taking the initiative two to three years ago in bringing us together. And we think that tremendous progress really has been made.

A week ago today we held an all day meeting in California with many of the interests, and I think at that point we did reach principle agreement, agreement in principle on most of the outstanding issues. The 90 day time frame which you have outlined for resolving the details we feel is realistic, and we are certainly prepared to work very intensively during that time frame.

I would like to mention one issue that has just been alluded to a couple of times that we think is very important, and that is the Operating Agreement for governing the operations of the Truckee River and Lake Tahoe. We feel this is a very key part of the long range settlement. It is something that, by its nature, is going to be very detailed and is going to take a lot of continued negotiation to get into it in much more depth. There have been people working on the issue, and the Tribe, and the Pyramid Lake Tribe and the companies in the Pacific have reached the agreement. We were not party to that, and we feel that there needs to be a more comprehensive agreement covering the Truckee and Tahoe system, and that basically it should not take effect until the parties have reached agreement on it.

I think that one of you alluded earlier to the need for an EIR, in California, Environmental Impact Report, and at the Federal level, Environmental Impact Statement. We certainly concur that that should take place before the Operating Agreement goes into effect.

I would like to, if I could, just offer a couple of observations on the testimony that you just heard, two points that struck me about it. Certainly nobody wants to put a lot of money into this up front, and I am sure the United States is distressed to think it is going to cost them quite a bit of money to get this whole settlement resolved. But, I think I heard Mr. Sayre talk about cost sharing from the states, and I certainly don't presume to speak for Nevada in this matter, but I don't think he will find California with any belief that it has any obligation to bring money to the table in this particular situation.

Many of the problems that we have here, if I may characterize them this way, I think are due to the fact that the United States gave the same water to different folks at different times. And out of that we have got a set of inequities that can probably only be dealt with by the United States bringing some money to the table. I certainly don't know what the amount is, whether what is in the bill is too high or too low. Representatives from the United States spoke of larger amounts needed for Stillwater, which is an issue we have tried to stay out of. But I hope the United States comes to this with the recognition that they really do need to bring some money in order to sort out all these inequities and bring about a final settlement.

The other point that I would urge on my friends in the Administration is that I think the time has come for them to appoint a management person to speak for the Department of Interior in these negotiations. We have had representatives from the Department of Interior in most of the negotiations. From time to time they made helpful comments, but it is distressing to get to this point and then hear quite a number of things that we have not heard before. I think each of the other parties has come to these discussions with both an attorney and a person like myself, an engineer, or somebody from the management, and I think it is really time for the Department of Interior to appoint somebody from their management to supplement the very able representative at the Department of Justice, Mr. Disheroon. We need to hear from them more directly on these issues with somebody who can speak for them.

Mr. Chairman, I won't take more of your time. I would, of course, be pleased to try to answer questions.

[The prepared statement of Mr. Kennedy follows:]

TESTIMONY OF DAVID N. KENNEDY
DIRECTOR, DEPARTMENT OF WATER RESOURCES,
STATE OF CALIFORNIA

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON WATER AND POWER

REGARDING

S.1554 - A BILL TO RATIFY AND IMPLEMENT
THE INTERSTATE ALLOCATIONS
OF THE TRUCKEE AND CARSON RIVERS
AND FOR OTHER PURPOSES.

WASHINGTON D.C.

FEBRUARY 6, 1990

I. INTRODUCTION.

Mr. Chairman and members of the Committee, my name is David N. Kennedy. I am the Director of the California Department of Water Resources. I am testifying before you today on behalf of the Governor of the State of California on S.1554. This bill would resolve a number of long-standing issues regarding the waters of Lake Tahoe and the Truckee and Carson Rivers. These issues are of vital concern to the State of California, the State of Nevada and the Pyramid Lake Paiute Tribe of Indians.

Both the Truckee and Carson Rivers arise on the eastern slope of the Sierra Nevada mountains in California and flow into Nevada. For over a century, there has been uncertainty about the amount of water available for use in each state from these interstate sources. This uncertainty hinders orderly planning and administration of water use in the California portion of these basins. During the last half century, repeated efforts have been made to resolve recurring disputes and litigation over interstate use of these waters. None of these efforts has been able to achieve an equitable apportionment of the waters. I believe that the negotiated settlement approach taken by S.1554 offers the best opportunity to resolve these disputes. Title I of S.1554 would provide certainty in water availability by making an apportionment between the two States. We appreciate the dedicated effort which Senator Reid and his staff have made to bring about and sustain the negotiations which have brought us to this point.

California Participation in the Negotiations

The interstate allocations contained in the legislation before you today is the product of a series of discussions among representatives of the States of California and Nevada, the United States Government, the Pyramid Lake Paiute Tribe of Indians, and water users in both States. The most recent negotiating meeting was held on January 30, 1990. The negotiations continued to make good progress to the point where we now have agreements in principle on the basic amounts of water which would be allocated to California, although some details remain to be negotiated.

In addition to participating in the interstate negotiations, California state representatives have met frequently with representatives of the California counties and water agencies which have responsibilities within the Lake Tahoe and Truckee and Carson River Basins. We have held these meetings to develop California's position and to keep these entities informed of the progress of the negotiations.

California's Objectives

1. Equitable Allocations

Our overall objective in participating in these negotiations has been to secure an equitable allocation of these interstate waters for users within the State of California. Such an allocation should satisfy California's present needs and provide sufficient water for reasonable future needs. The apportionment agreed upon by the two states would allocate to California approximately 10 percent of the average annual flow of the Truckee River and 7 percent of the average annual flow of the Carson River, as measured at the state line.

2. California Approval of Operating Agreement

Our participation in the negotiations has been conditioned on the understanding that a comprehensive system operating agreement for the Truckee River must also be negotiated. This agreement should operate storage facilities within the Truckee River system to satisfy rights and needs within Nevada. At the same time, it should enhance California's *in situ* beneficial uses of water without diminishing California's limited allocations. *In situ* uses include instream flows for fish, wildlife, and recreation; recreational uses of reservoirs within California;

optimization of water levels within Lake Tahoe; and maintenance of water quality in the Truckee River.

The Pyramid Lake Paiute Tribe and the Sierra Pacific Power Company have entered into a two-party Preliminary Settlement Agreement. Under this agreement, the power company waives certain hydropower generation rights in exchange for the ability to store a limited amount of water in existing reservoirs in California for a drought reserve supply for use in Nevada. The remainder of the waived hydropower rights would be used to create credit storage to provide spawning flows for endangered fish in Pyramid Lake. These are worthy objectives and we support them. However, operation of the Truckee River system must go beyond these objectives and include other system improvements. Consideration must be given to operation of the existing storage to satisfy downstream water rights and needs while enhancing instream uses of water, such as recreation and fish and wildlife needs. There are many inefficiencies in the current system of river regulation, which is more suited to the early part of this century than to its last decade.

The State of California must be a party to, and approve, the Truckee River operating agreement. Development of that agreement will involve complex legal and technical issues that will take time to resolve. Once established in principle, the agreement will be subject to the requirements of the National Environmental Policy Act and the California Environmental Quality Act. Thus, the legislation should authorize negotiation of the operating agreement but should not constrain operations by rigid criteria which would restrict in advance consideration of all reasonable options to achieve the agreement's goals. These goals are to meet California's allocations, satisfy all Nevada water rights, provide credit storage for Sierra Pacific, preserve and enhance the Pyramid Lake fishery, restore wetlands, and enhance reasonable and beneficial *in situ* uses.

Status of the Settlement Negotiations

We believe that substantial progress has been made since the present round of settlement negotiations began in 1988. Some of that progress is currently reflected in the language of S.1554, as introduced in August, 1989. Since then we have made additional progress. In particular, California is now in substantial agreement with the State of Nevada on the terms of Title I, which contains the interstate water apportionment provisions.

We have not reached complete agreement with the Pyramid Lake Tribe or the United States on these provisions, but we are hopeful. Our last negotiating meeting was held in Sacramento on January 30, 1990, and chaired by Senator Reid's staff. We believe it was productive. Many of the outstanding issues were agreed to in principle. If implemented as discussed, those agreements would establish the amounts of water allocated to California. Some issues remain to be negotiated, particularly conditions which would affect California's use of the Truckee Basin allocation. We will continue to work toward resolution of these issues.

My testimony below is directed to S.1554 as it would read if it included the joint California-Nevada Amendments dated December 29, 1989, which were transmitted to Senator Reid. I will also refer to the January 30 agreements in principle and the issues discussed then. Our support of S.1554 is conditioned, and will continue to be conditioned, on achieving an allocation of water which is equitable and practical. The legislation also must protect the interests of the areas of origin within California and provide for California's participation in negotiation and execution of an agreement to re-operate the system.

II. BACKGROUND

Description of the Truckee and Carson River Systems

The headwaters of the Truckee River rise in the majestic Sierra Nevada surrounding Lake Tahoe, one of the world's most famous high alpine lakes. The lake is renowned for its clarity and its scenic surroundings. The area is a popular year-round destination for vacationers from throughout the nation.

The lake is regulated by a small dam at its natural outlet, which controls flows into the Truckee River. From Lake Tahoe, the Truckee River flows north to the town of Truckee, then east to its confluence with the Little Truckee River near Boca, in California. The Little Truckee River supplies Stampede and Boca Reservoirs. A long-standing diversion in the headwaters of the Little Truckee River takes some water north into California's Sierra Valley, where it is used to supplement well water for irrigation. The Sierra Valley diversion has been adjudicated in a 1958 Decree, United States v. Sierra Valley Water Company. [1]

From Boca, the Truckee River flows east into the State of Nevada, through the cities of Reno and Sparks to Wadsworth, where it turns to the north and flows into Pyramid Lake. Pyramid Lake is entirely within the Pyramid Lake Indian Reservation, and is the habitat for two species of fish listed under the Endangered Species Act. The Truckee River has been the subject of several agreements and decrees referred to in S.1554. These include the 1935 Truckee River Agreement, and the Orr Ditch decree, which adjudicated water rights among Nevada users. The State of California and California water users are not parties to the Orr Ditch action.

The Carson River also rises on the slopes of California's eastern Sierra Nevada and flows generally eastward across the state line to its present terminus in Lahontan Reservoir near Fallon, Nevada. The Carson River is the subject of several decrees, including the Alpine decree referred to in S.1554 Unlike the Orr Ditch action, the Alpine action adjudicated individual water uses within California. However, the States of

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[1]. U.S.D.C., N.D. Cal., Civ. No. 5597 (1958).

California and Nevada were not parties to the Alpine action. Thus, while the Decree includes individual water users in each state, it is not an equitable apportionment of the Carson River.

The watersheds of Lake Tahoe and the Truckee and Carson Rivers, together with the major storage facilities on each river, are shown on maps which is attached to this testimony.

Early Interstate Water Disputes

As early as 1870 when the first dam was constructed at the outlet of Lake Tahoe, disputes arose over California's and Nevada's share of the waters of Lake Tahoe and the Truckee River. At different times, diversion of the Lake's waters was proposed for irrigation, municipal water supplies, power and mining. In 1912, the Conservation Commission of the State of California recommended that the State bring an original jurisdiction lawsuit in the United States Supreme Court to apportion the waters of Lake Tahoe. Nothing came of this recommendation.

As a result of intense disputes over the need to pump water from Lake Tahoe when it dropped below its natural rim during the record drought in the late 1920's and 1930's, the two states formed the Lake Tahoe Interstate Water Conference Committee in 1931. That Committee attempted to resolve disputes by discussion and negotiation. Among other accomplishments, its recommendations to reduce Floriston Rate releases from Lake Tahoe when the Lake is low were included in the 1935 Truckee River

Agreement. The Committee had no regulatory or adjudicatory powers.

The California-Nevada Interstate Water Compact

The Committee continued in existence until the early 1950's. By this time, growth in the Lake Tahoe Basin was occurring at a more accelerated pace. Downstream water users in Nevada increasingly protested water right applications for water use on both the California and Nevada sides of the Lake Tahoe Basin and for use within the Truckee Basin in California.

As a result of these protests and other disputes over use of the waters of the Carson and Walker Rivers, in 1955 the legislatures of California and Nevada authorized negotiation of an interstate compact to allocate these waters between the two states. Negotiation of the Compact took 13 years. It was ratified in its final form by the California Legislature in 1970 and by the Nevada Legislature in 1971. It provided an apportionment between the two states to the waters of Lake Tahoe and the Truckee, Carson, and Walker Rivers.

The Compact was controversial even before the two state legislatures ratified it. Much of this controversy related to a provision which required that Congress, in giving its consent to the Compact, make many of its provisions binding on the United States and its agencies and Indian Tribes. This provision was strongly opposed by the United States Departments of Interior and

Justice as interfering with federal claims and powers. The Pyramid Lake Tribe also strongly opposed the Compact.

Shortly after the Compact was ratified by the two states, the United States sought leave to bring an original jurisdiction lawsuit in the United States Supreme Court against the states of California and Nevada seeking a declaration of their respective rights to the Truckee River. The Supreme Court denied the motion in furtherance of its preference to have interstate water disputes resolved through negotiation of interstate compacts. Since a Compact had been negotiated between the two states, the Court held that there was at that time no justiciable controversy between the States. [2]

Despite repeated introduction of consent bills, Congress never enacted legislation to approve the Compact. The last effort was made in 1986 by former Nevada Senator Laxalt. In 1987, water officials in the two States reluctantly concluded that further efforts to secure the consent of Congress to the Compact would be fruitless.

Thus, all efforts -- the early negotiations, the Compact, and litigation -- have failed to achieve an effective interstate apportionment of the waters of these basins. The need for an apportionment has become more urgent, as increasing demands and claims are made on the waters of the Truckee and Carson Rivers.

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[2]. United States v. Nevada and California, 412 U.S. 534 (1973).

Administration of Water Rights Within California

The California State Water Resources Control Board administers California law governing appropriation of surface water. (California law does not require a water right permit for riparian rights or use of ground water.) Following adoption of the Compact by the California Legislature in 1970, the California Water Board adopted a policy for the administration of water rights in the Tahoe Basin. That policy limited surface use together with ground water use to the Compact's allocation. With minor exceptions, no new water right permits have been issued since 1972, either in the Tahoe Basin, or the Truckee River Basin. This policy underscores the need for an apportionment of water, so that California may administer its laws with certainty about the amount of water available for use in each basin.

S.1554 Negotiations

In early 1988, California joined new settlement negotiations initiated by Senator Reid. Through the patient efforts of the Senator, the initial meetings among the Nevada parties resulted in understandings on a settlement approach which could resolve all major water supply problems and litigation affecting the entire Truckee River system. At that point, California was invited to join in the negotiations to resolve the long-standing interstate apportionment issue.

Our participation in these negotiations has focused primarily on achieving an interstate apportionment. Rather than attempting to negotiate another interstate compact or litigating an equitable apportionment in the Supreme Court, the parties agreed to a different approach. Congress itself would directly establish the negotiated apportionment through legislation. This congressional apportionment would be the first since the passage of the Boulder Canyon Project Act. That apportionment was upheld in Arizona v. California. [3]

Negotiation of the interstate water allocations has not been easy. The text of S.1554, as introduced last August is the product of about a year of effort. At that time, the parties were unable to agree on methods of calculating the Tahoe Basin and Truckee Basin allocations. Thereafter, representatives of the two states met separately and came to agreement on the allocations. That agreement was reached in December, 1989, and it is reflected in the December 29, 1989, Joint California-Nevada Amendments to S.1554, a copy of which is attached to this testimony. As noted above, these joint amendments would be revised if the agreements in principle reached at the January 30 meeting are implemented.

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[3] 373 U.S. 546 (1963)

III. ALLOCATIONS OF WATER TO CALIFORNIA MADE BY TITLE I

Title I of S.1554 (as revised by the Joint California-Nevada Amendments and the January 30 agreements in principle) would make the following allocations of water to California.

The Carson River Basin.

The basic allocation to California would be those rights adjudicated to California water right holders in United States of America v. Alpine Land and Reservoir Company.[4] This is a decree entered in a United States District Court action involving water right claims of citizens of the two states. It is an *in personam* action which binds the parties and their successors. The States of California and Nevada are not parties to the Decree. Most, although not all, uses of water in California are adjudicated in the Decree, so it is a good starting point for the allocation.

Unlike the State of Nevada, which recognizes only the doctrine of prior appropriation, California law recognizes other legal doctrines for the use of water, including the doctrine of riparian rights. The purpose of Section 101 (b)(1) is to recognize (1) that there are riparian users who have initiated use of water under California law, which uses are not included in the Decree; and (2) that there are some old appropriations which were not included in the decree. This provision is consistent with the general intent of the Settlement Act that existing water rights not be adversely affected.

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[4]. U.S.D.C., D Nev., Civ. No. D-183-BRT (1980).

At the January 30 meeting, it was agreed that Section 101 (b) (1) of the joint amendments would be revised to specify that nothing in the Act would affect water rights recognized under state law which are not included in the Alpine Decree. Upon further review of these uses, we determined that a maximum consumptive use of 1,300 acre-feet per year would be sufficient for California, rather than the 1,500 specified in S.1554 as introduced.

Section 101(b)(2) in the joint amendments is intended to recognize the existing economy which has arisen in California's Alpine County as the result of the required export of treated effluent from South Lake Tahoe to Alpine County. The farmers who must take the treated effluent use it to supplement their Alpine Decree rights. This section provides that, if the export of effluent should cease, additional Carson River storage in Alpine County, not to exceed 2,000 acre-feet per year, would be authorized to partially offset the loss of this water. This is only a partial replacement; current use of this water is approximately 6,000 acre-feet per year. While cessation of the effluent export is not likely, we believe that this provision is equitable, both because of the reliance which has developed on this water, and because the water will become available in the Truckee Basin if it is not exported.

A compromise has been negotiated between Carson Basin users in Nevada and California. It would limit the compensatory allocation to waters of the West Fork Carson River, and specify that the use of the allocation not interfere with other irrigation and storage rights in Segments 4 and 5 of the Carson River, as defined in the Alpine Decree. We would accept this compromise as a reasonable alternative to the provision in the joint amendments.

Lake Tahoe Basin.

Our intent in negotiating an allocation of water for use in the Lake Tahoe Basin is to assure consistency of water availability with the level of development in the Basin authorized by the Tahoe Regional Planning Agency. The agency was created by an interstate planning compact approved by Congress. Land use planning and construction within the basin are strictly regulated by this agency. Growth is limited to that which can occur without adversely affecting the basin's scenic natural resources.

The basic allocation to California would be the 23,000 acre-feet per annum made by the old water compact. However, the allocation is not identical in all respects to the old water Compact. The latter authorized transfers of water from the

Truckee Basin into the Tahoe Basin, and allowed California to use its Stampede Reservoir allocation by exchange in the Tahoe Basin. Neither of these supplementary sources is provided in the negotiated settlement.

Among the clarifications made by Section 102 (b) is a provision intended to encourage water conservation in the basin. Section 102 (b)(3)(ii) would provide that, where a water distribution system is fully metered, the water use chargeable to the allocation shall be measured as the cumulative total of all the meters in the system. As modified by the January 30 agreements in principle, this provision would also require that a water conservation plan be adopted, approved, and implemented. The plan would contain specified additional conservation measures, such as public education, leak detection and retrofit programs. This provision, we believe, will strongly encourage water conservation and this, in turn, will encourage more efficient use of water in the Basin.

Many water conservation measures have already been adopted by the three public utility districts within the California portion of the Basin. These measures are consistent with the objectives of the proposed conservation plan. The projections of ultimate water demand prepared for the three public utility districts assume implementation of water conservation measures.

The Truckee Basin

Section 103 (b) of the Joint California-Nevada Amendments allocates to California the right to divert or extract 16,000 acre-feet per year by depletion, without regard to whether the source of the water is surface water or ground water. "Depletion" means the amount of water actually consumed by diversion and use. When the annual diversion of water within California equals or exceeds 16,000 acre-feet, the two states, the Secretary of the Interior, and the Tribe would negotiate an agreement which establishes the relationship between the amount of water diverted or extracted and the amount of water depleted.

In the January 30 meeting, it was agreed in principle that the surface and ground water allocation for the Truckee River Basin would be 32,000 acre-feet per year. The allocation would be by gross diversion instead of the 16,000 acre-feet by depletion. Several limitations on the use of this allocation were agreed to.

(1) Surface use would be limited to 10,000 acre-feet per year. This surface use would be subject to the Tribe's Orr Ditch right, and surface uses initiated after the effective date of the Act would also be subject to Sierra Pacific's 40 cubic feet per second right for use in Reno. The manner of use of this surface allocation has not been fully negotiated. We believe that the allocation of surface water must include use of the water by direct diversion and by diversion to storage, and that storage

should include both regulatory and conservation storage. This storage issue must be worked out in the operating agreement negotiations.

(2) Wells drilled after the effective date of the Act would have to be located in a manner to minimize short-term reductions of surface flow to the maximum extent feasible.

(3) Any use within the State of Nevada of Truckee Basin ground water extracted from within the State of California would be subordinate to California uses, and the use would have to cease if it caused extractions to exceed safe yield. In addition to this condition, it is important to note that these extractions would be subject to appropriate limitations on transfers of water, an issue more fully discussed below.

(4) Extraction and use of ground water would be subject to all terms and conditions of California law.

(5) Determination of the safe yield of any ground water basin in California would be made by the United States Geological Survey.

In addition to the above conditions, two conditions were discussed that California has not agreed to. These include, first, a proposal to prohibit any new agricultural use in California of Truckee Basin water after the effective date of the Act. It is extremely unlikely that any commercial agriculture would be developed within the Truckee River Basin. However, we believe that California law should determine what is a beneficial use of water.

Second, it was proposed that replacement water rights be acquired from pre-existing uses if and to the extent that the methods of treating and disposing of waste water in the California portion of the Truckee Basin were changed to allow reuse of the water, application to land which increases the consumptive use, or export of the water. This condition could impose unreasonable burdens on the Tahoe-Truckee Sanitation Agency in selecting the most feasible and environmentally beneficial means of complying with its NPDES discharge permit. Further negotiation of this issue is necessary.

The Truckee Basin allocation also confirms the existing Sierra Valley Decree, that is, the diversion out of the Little Truckee River into the Sierra Valley.

California's Truckee Basin allocation is considerably different from that of the old Compact, which contained three allocations: (1) 10,000 acre-feet per annum by direct diversion; (2) 6,000 acre-feet of yield from Stampede Reservoir, subject to entering into a water supply contract with the United States; and (3) a right to develop up to 10,000 acre-feet of yield, subject to downstream Nevada water rights after the first two allocations were committed. The old compact exempted ground water use from the allocations, except to the extent that it could be established that extraction and use of ground water in one state was taking water that otherwise would flow as surface water to the other state. The amount of water allocated to the Truckee Basin in the negotiated allocation reflects absence of some of the old compact allocations, plus the fact that ground water use is now included.

Compliance with Interstate Allocations

Each state would be required to prepare an annual report on water use and would be responsible for assuring compliance with the interstate allocations. No detailed administration is specified in Section 104, both because it should be the primary responsibility of each state to assure compliance and because the operating agreement, when negotiated, will require administration which should be integrated with the interstate allocations. Dispute resolution mechanisms, which will undoubtedly be included in the operating agreement, could apply to disputes over compliance with the allocations. This approach appears to be more efficient than creating a separate entity to administer the interstate allocations.

Interstate Transfers

An equitable apportionment, whether by court decree or an interstate compact, can restrict use of water to areas within the state to which the water is allocated without provisions for transferring the use or water rights to another State. In Sporhase v. Nebraska,[5] the United States Supreme Court held that water is an article in interstate commerce and the states may not adopt laws restricting its flow in interstate commerce. However, Sporhase distinguished the situation where water is subject to an equitable apportionment, whether through an interstate compact or a decree. In such an event, the Court stated that water may be restricted to use within the boundaries of one state. The ability of an interstate compact to prohibit interstate flow of water has been upheld in at least one case, Intake Water Co. v. Yellowstone River Compact Commission. [6]

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[5]. 458 U.S. 944 (1982)

S.1554 could simply prohibit interstate transfers, as may interstate compacts or decrees. Instead, Section 106 would authorize voluntary interstate transfers, subject to Section 106 (b), which authorizes the States to adopt reasonable criteria to regulate transfers to assure that the economy and the environment of the area from which the water is transferred are not adversely affected. Section 106 thus would accommodate market efficiency in the use of water through transfers, but at the same time prevent unreasonable economic and environmental impacts on the area from which the water is transferred. It would prevent frustration of one of the major purposes of an interstate allocation, that is, reserving for the areas of origin an amount of water reasonably needed for present and future uses, and for maintenance of the quality of the environment of the areas.

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[6]. 759 F. 2d 568 (9th Cir. (1985), cert. denied, 476 U.S. 1163 (1986)

Section 106 (b) is vital to any provision authorizing interstate transfers. The State of California does not presently regulate appropriative water rights initiated before 1914 or ground water rights. Section 106 (b) simply authorizes the California Legislature to adopt criteria to regulate transfers, including pre-1914 rights and ground water rights. It is appropriate to include a provision authorizing a review of transfers by a state to avoid future issues over whether Sporhase bars such regulation.

Federal Uses of Water.

Section 107 provides that use of water by the United States or its agencies or Indian Tribes shall be charged to the allocation of the state wherein the use is made, except for interstate transfers authorized by Section 106. This provision is consistent with similar provisions in several interstate compacts, including the Republican River Compact, the Yellowstone River Compact, and the Belle Fourche River Compact. This provision is essential to California. It is necessary because of the substantial federal involvement in the Truckee River system, including the operation of Lake Tahoe; and the delivery of water to the Pyramid Lake Reservation, the Newlands project, and the Lahontan Valley wildlife management areas. Under this provision, federal uses of water in California would be charged to California's allocation.

IV. ISSUES OF CONCERN TO CALIFORNIA NOT INCLUDED IN TITLE I

Litigation affecting California which would be dismissed

1. Pyramid Lake Paiute Tribe of Indians v. California, et al, Civ No. S-181-378-RAR-RCB (E.D. Calif.).

This case is a class action suit filed in June 1981, against the State of California and seventeen water districts and companies holding California water rights. It seeks to adjudicate the rights of all California users on the Truckee River which are adverse to the claims of the Pyramid Lake Tribe. The District Court has granted summary judgment in favor of those California water right holders who can establish reliance on the Orr Ditch decree, but it has denied summary judgment in favor of the State of California. The litigation has been on hold for the last several years while settlement negotiations have been pursued.

This case has added to the uncertainty which clouds administration of water rights law in California, and it underscores the need for an apportionment of the waters of the Truckee River. The apportionment must prevent encroachment on California's water supply by downstream Nevada claims, including those for Pyramid Lake.

2. Pyramid Lake Paiute Tribe v. Lujan, Civ. No. S-87-1281-LKK (E.D. Calif.).

This lawsuit contends that the current operation of the dam at Lake Tahoe violates the Endangered Species Act and several other requirements of law. California is among many parties that have intervened in this litigation. This case has been stayed while settlement negotiations are pursued. The issues raised by this litigation can be more effectively addressed through a negotiated operating agreement.

Negotiation of the Operating Agreement

As noted in the introduction to this testimony, California must be a party to the negotiation of the operating agreement for the Truckee River, and approval and execution of the agreement by California must be a condition to its becoming effective. An amendment to Section 3(4) -- the definition of "Operating Agreement" -- is attached to this testimony. The amendment outlines the matters which should be included in a master agreement, including the entity created to assure compliance with the legislation, operating criteria, and dispute resolution mechanisms.

We believe that negotiation of the operating agreement may take considerable time, if it is to fully realize all reasonable opportunities to improve the coordinated operation of the river to meet existing rights while maximizing in situ benefits. We further believe that there are many potential approaches to increasing the efficiency of river system operation and to improving the existing regimen of water measurement and control.

Allocation of Uncommitted Storage Capacity in Prosser Reservoir

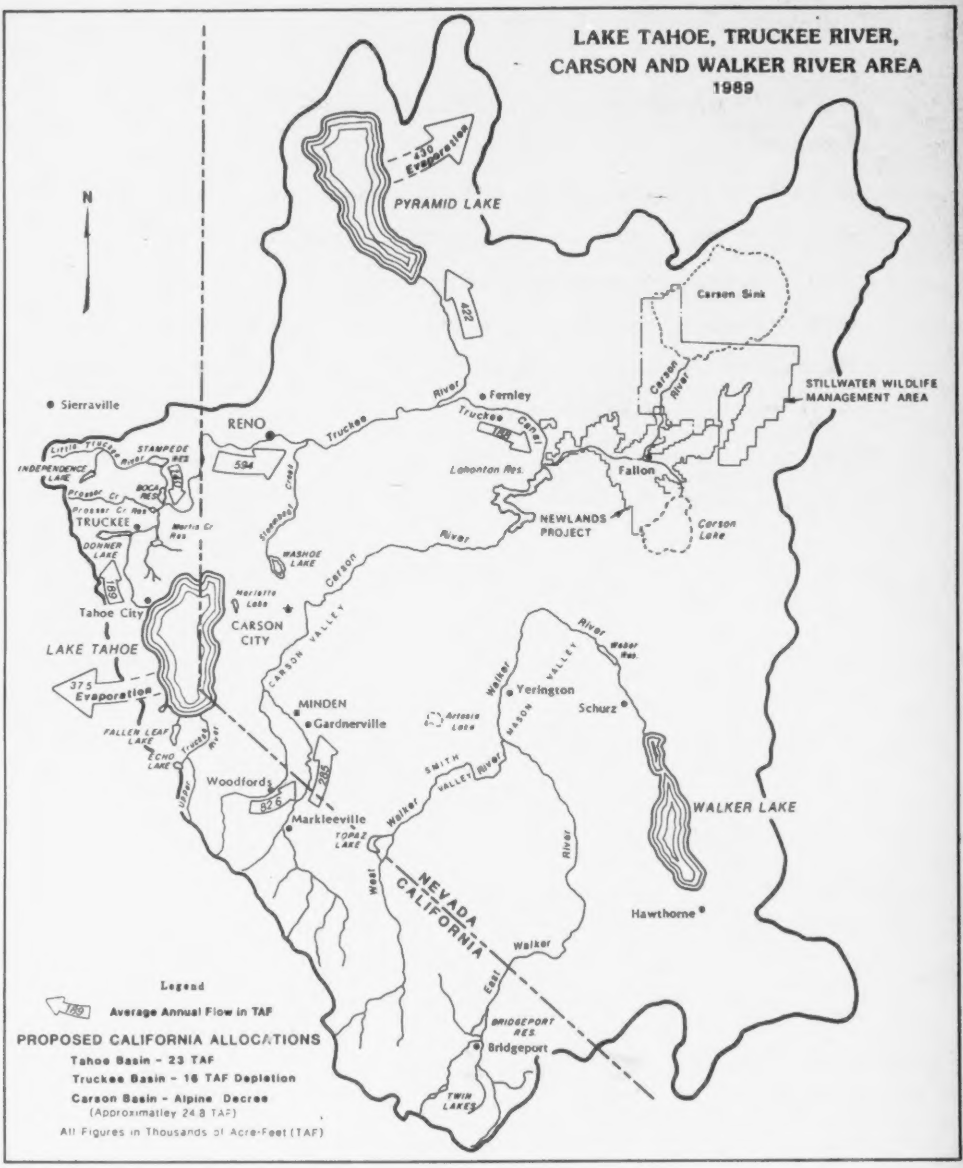
Section 602 (e) would allocate the uncommitted capacity of Prosser Reservoir to Pyramid Lake for the benefit of the Tribe and the fishery. This provision has not been negotiated among all the parties, and it should be negotiated as a part of the operating agreement. S.1554 should not foreclose the opportunity to make operational improvements in the system; it should not commit Prosser Reservoir's unallocated capacity to a single use. We believe that available water resources should serve the broadest possible scope of reasonable and beneficial uses.

Jurisdiction of the State Water Resources Control Board.

The last sentence of Section 602 (f) provides that nothing in Title II of the Act will affect the jurisdiction of the Nevada State Engineer. It should be amended to include the California State Water Resources Control Board, since several reservoirs store water under water right permits issued by that board.

V. CONCLUSION

While my testimony has indicated several areas where agreement has not yet been reached, I remain encouraged at the substantial progress which has been made on reaching a complete negotiated agreement on allocations to California. If the most recent agreements in principle are implemented as discussed above, the amounts of water allocated to California will be established. All that remains is to come to agreement on some conditions on their use and transfers. I remain hopeful that these matters can be negotiated within the time frame established by this committee.



LAKE TAHOE, TRUCKEE RIVER, CARSON AND WALKER RIVER AREA
1989

Legend

Average Annual Flow in TAF

PROPOSED CALIFORNIA ALLOCATIONS

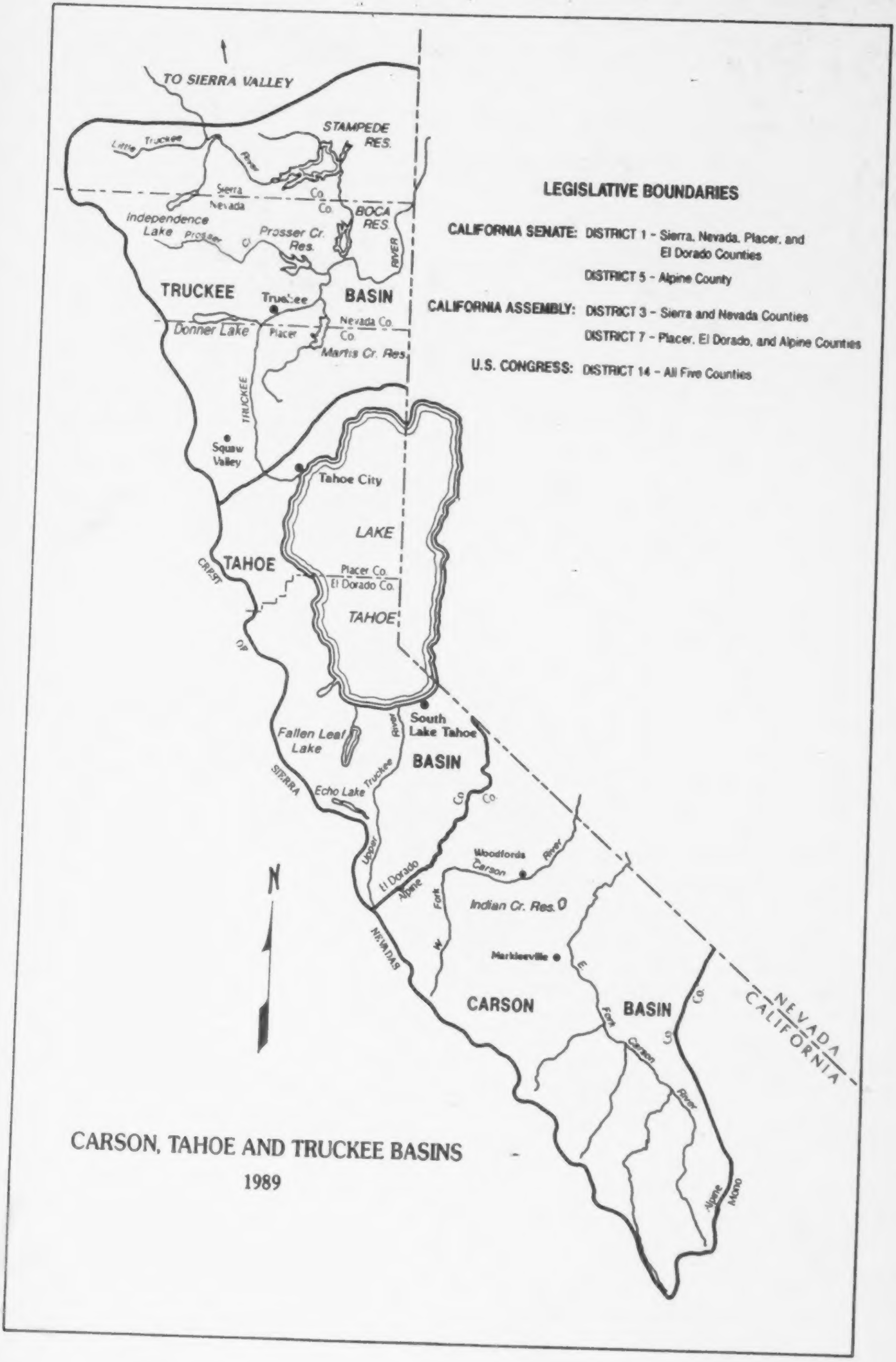
Tahoe Basin - 23 TAF

Truckee Basin - 16 TAF Depletion

Carson Basin - Alpine Decree
(Approximatley 24.8 TAF)

All Figures in Thousands of Acre-Feet (TAF)

N
430 Evaporation
PYRAMID LAKE
422
Carson Sink
Carson River
STILLWATER WILDLIFE MANAGEMENT AREA
Sierraville
RENO
Truckee River
Fernley
Truckee Canal
594
Little Truckee River
STAMPEDE RES
INDEPENDENCE LAKE
Prosser Cr
BOCA RES
Prosser Cr Res
TRUCKEE
Martis Cr Res
DONNER LAKE
189
Steamboat Creek
WASHOE LAKE
Lahontan Res.
Fallon
NEWLANDS PROJECT
Carson Lake
Carson River
Marlette Lake
Tahoe City
LAKE TAHOE
CARSON CITY
375 Evaporation
CARSON VALLEY
MINDEN
Gardnerville
FALLEN LEAF LAKE
ECHO LAKE
Upper Truckee River
Woodfords
82.6
285
Markleeville
TOPAZ LAKE
Artesia Lake
Walker River
Weber Res.
Yerington
MASON VALLEY
Schurz
SMITH VALLEY
Walker River
West Walker River
WALKER LAKE
NEVADA
CALIFORNIA
Hawthorne
East Walker
BRIDGEPORT RES.
Bridgeport
TWIN LAKES
189


TO SIERRA VALLEY
STAMPEDE RES.
Little Truckee River
Sierra Co.
Nevada Co.
BOCA RES.
RIVER
Independence Lake
Prosser Cr.
Prosser Cr. Res.
TRUCKEE
Truckee
BASIN
Nevada Co.
Placer Co.
Donner Lake
Martis Cr. Res.
TRUCKEE
Squaw Valley
Tahoe City
LAKE
TAHOE
CREST
Placer Co.
El Dorado Co.
TAHOE
OF
South Lake Tahoe
Fallen Leaf Lake
River
SIERRA
Echo Lake
Truckee
BASIN
Co.
Co.
Upper
El Dorado
Alpine
Woodfords
Carson
River
Indian Cr. Res.
W
Fork
NEVADAS
Markleeville
E
CARSON
BASIN
Fork
Carson
River
Co.
Co.
Alpine
Mono
NEVADA
CALIFORNIA
N

LEGISLATIVE BOUNDARIES

CALIFORNIA SENATE: DISTRICT 1 - Sierra, Nevada, Placer, and El Dorado Counties

DISTRICT 5 - Alpine County

CALIFORNIA ASSEMBLY: DISTRICT 3 - Sierra and Nevada Counties

DISTRICT 7 - Placer, El Dorado, and Alpine Counties

U.S. CONGRESS: DISTRICT 14 - All Five Counties

CARSON, TAHOE AND TRUCKEE BASINS
1989

101st CONGRESS
1st SESSION
S. 1554

JOINT CALIFORNIA-NEVADA AMENDMENTS
To Title I - Interstate Water Apportionment Provisions
December 29, 1989

Deletions to text shown in ~~strikeout~~.
Additions to text shown in underline.
Centered number in text corresponds to bill page number.

IN THE SENATE OF THE UNITED STATES

August 4 (legislative day, January 3), 1989
Mr. REID introduced the following bill;
which was read twice and referred to the
Committee on Energy and Natural Resources

A BILL

To ratify and implement water Settlements involving the Pyramid Lake Paiute Tribe, the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act".

TITLE I-INTERSTATE WATER APPORTIONMENT PROVISIONS

SEC. 101. THE CARSON RIVER.

(a) CONFIRMATION OF COURT ALLOCATION.-The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine Decree is confirmed.

(b) FURTHER ALLOCATIONS.-(1) In addition to the allocations referred to in subsection (a), the States of California and Nevada are further allocated sufficient water from the Carson River and its tributaries to serve beneficial uses which are not encompassed in the Alpine Decree and were initiated prior to the effective date of this Act. The total amount of water allocated by this subsection shall not exceed one thousand five hundred acres-feet per annum by depletion for use in California and two thousand one hundred and thirty-one acre-feet per annum by depletion for use in Nevada.

(2) RIGHT TO COMPENSATION FOR DISCONTINUANCE.---If all or any portion of the effluent imported from the Lake Tahoe Basin into the watershed of the Carson River in California on or after the effective date of this Act is discontinued by reason of the disposal of such effluent, including underground disposal, within the Truckee River Basin or the Lake Tahoe Basin, the allocation to California of the waters of the Carson River and its tributaries for use in Cali-

fornia shall be augmented by an amount of water, not to exceed 2000 acre-feet per year, which may be diverted to storage until rotation occurs under provisions of the the Alpine Decree, which will compensate California for any such discontinuance: Provided, That any such augmentation shall be for use only on lands to which rights decreed by the Alpine Decree are appurtenant: Provided further, That nothing in this Act shall be construed to prohibit the continued use of all or any portion of such effluent on lands within California.

~~(c) APPLICATION OF STATE LAWS.—Nothing in this section shall preclude application of the laws of the States relating to abandonment or forfeiture of water rights for nonuse.~~

~~(d) VOLUNTARY INTERSTATE TRANSFERS.—The States of California and Nevada, the Tribe, and the Secretary may negotiate an agreement permitting the voluntary interstate transfer of water of water rights for use within the Carson River Basin. Any such agreement shall, prior to implementation, first be approved by the appropriate water right administration authority of each State pursuant to the State laws applicable to transfer of water or water rights.~~

~~(e) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA.—Nothing in this Act precludes the States of California and Nevada, the Tribe, and the Secretary from negotiatig an agreement that permits the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the State of Nevada on~~

~~-the-Carson-River-or-its-tributaries-that-result-in-inundation----of--lands-in-California:-Provided-further,-That-this-agreement--may----~~

(c) STUDIES OF CONJUNCTIVE USE -- Nothing in this Act shall foreclose the right of either state to study, either jointly or severally, the appropriation of unappropriated water which would otherwise be lost to beneficial use, including use on federally owned or operated wildlife refuges within the Carson River system, to enable conjunctive use of ground water.

(d) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA - Nothing in this Act precludes the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the Carson River Basin, provided that such storage facilities shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(e) This Act:

(1) recognizes and confirms the right to change the beneficial use of water from irrigation to storage for municipal and industrial ~~and-related~~ uses: Provided, That such changes are in accordance with the Alpine Decree,

(2) permits water stored under this procedure to be diverted to storage in a given year and held for use in that or subsequent years, and

(3) confirms the historic practice for operation of reservoirs identified on pages 145 and 146 of the Alpine Decree to store, release, and use quantities of water determined by the capacity of the reservoirs and the yield of the tributary basins.

~~-(f)-Nothing-in-this-section-shall-be-construed-as-modify---ing-or-terminating-any-court-decree-or-as-affecting-the-appli--cability-of-State-law-and--procedures-to-the-water-allocated--hereunder.-~~

SEC. 102. THE LAKE TAHOE BASIN.

(a) ANNUAL GROSS DIVERSION TOTALS.- The total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in the basin shall not exceed thirty-four thousand acre-feet annually, of which---

(1) twenty-three thousand acre-feet annually are allocated to the State of California for use within the Lake Tahoe Basin; and

(2) eleven thousand acre-feet annually are allocated to the State of Nevada for use within the Lake Tahoe Basin.

After use of the water allocated in this subsection such water may be exported from the Lake Tahoe Basin or reused.

(b) DETERMINATION OF GROSS DIVERSION.-The ~~States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement on the manner in which the gross diversion amounts under section (a) will be determined. The agreement shall include the following provisions:~~ total annual gross diversions for use under subsection (a) shall be determined subject to the following conditions:

(1) Water diverted and used to make snow shall not ~~count against~~ be charged to the gross diversion allocation of either California or Nevada unless and to the extent that the snow is produced for use outside the basin.

(2) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's or Nevada's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per annum.

(3) Where water is diverted by a distribution system, as defined by (iii) below, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) Where a water distribution system supplies any municipal, commercial, and/or industrial points of delivery to use which are not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source.

(ii) Where all municipal, commercial, and/or industrial points of delivery to use (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured as the sum of all amounts of water supplied to each such point of delivery to use.

(iii) As used in this subsection, the term "water distribution system" means a point or points of diversion from a water supply source or sources together with associated piping which serve a number of identifiable points of delivery to use, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system;

(4) Water inflow and/or infiltration to sewer lines is not a diversion of water, and such water shall not be charged to the gross diversion allocation of either state.

(5) Regulation of stream flow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either state.

(c) TRANSBASIN DIVERSIONS.-(1) The transbasin diversions from the Lake Tahoe Basin in Nevada and California identified in paragraph (2) below, may be continued, to the extent that such diversions are recognized as vested or permitted rights under the laws of the State where each diversion is made. Unless otherwise provided in this section, such diversions are in addition to the other allocations made by this section.

(2) The transbasin diversions referred to in paragraph (1) above are---

(A) the diversion of a maximum of three thousand acre-feet per annum from Marlette Lake for use in Nevada;

(B) the diversion of a maximum of five hundred and sixty-one acre-feet per annum from Lake Tahoe for use in Nevada, except that such diversion shall count against the allocation to Nevada made by this section;

(C) the diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) the diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

(3) The transbasin diversions identified in paragraph (2) may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or permitted. Water made available for use within the ~~basin~~ Lake Tahoe Basin as a result of any such transfer shall not count against the allocations made by this section, and such water may be depleted.

(d) ~~EFFECT-OF-ALLOCATION-OF-CERTAIN-WATER.-~~
~~(1) Water-imported-from-any-source-outside-the-Lake-Tahoe-basin-shall-not-count-against-the-allocation-made-by-this-section-but-shall-count-against-the-allocation,-if-applicable,-of-the-basin-of-origin.-~~

~~(2)-Water-diverted-or-extracted-in-one-State-for-use-in-the-other-shall-count-against-the-allocation-under-this-section-of-the-State-in-which-the-water-is-used.-~~

SEC. 103. THE TRUCKEE RIVER

~~The-States-of-California-and-Nevada,-the-Tribe,-and-the-Secretary-shall-negotiate-an-agreement-allocating-the-waters-of-the-Truckee-River-basin-between-California,-Nevada,-and-the-Tribe.-The-allocation-of-water-to-California-under-this-section-shall-not-form-the-basis-for-additional-claims-of-water-from-any-water-right-holders-by-the-Tribe-under-the-Endangered-Species-Act.~~

(a) CALIFORNIA TRUCKEE BASIN ALLOCATION - (1) There is allocated to California the right to divert and/or extract, and to utilize any combination thereof, within the Truckee River Basin in California 16,000 acre-feet of water per calendar year by depletion, without regard to whether the source of supply for such diversion or extraction is surface water or ground water.

(2) Within one year following the issuance by the State of California of an annual report of water use for the Truckee River Basin, pursuant to Section 104, which shows that the gross diversion or extraction within the Truckee River Basin in California equals or exceeds 16,000 acre feet, representatives of the States of California and Nevada, of the Tribe, and the Secretary shall negotiate an agreement which establishes the relationship between the amount of water diverted or extracted and the amount of water depleted. The entitlement of the State of California to divert and/or extract 16,000 acre feet by depletion shall thereafter be governed by that agreement.

(3) Diversions of water from surface supplies pursuant to this subsection shall be subject to the following Nevada uses:

(A) All such surface diversions shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in the Orr Ditch Decree.

(B) Diversion for use within California initiated after the effective date of this Act shall also be subject to the right of the Sierra Pacific Power Company, or its successor, to divert 40 cubic feet per second of water for municipal and domestic use in the Truckee Meadows in Nevada, as said right is more particularly described in Article V of the Truckee River Agreement.

(4) The water allocated to California pursuant to this subsection may be diverted directly to beneficial use or diverted to storage in reservoirs.

(b) SIERRA VALLEY, CALIFORNIA - The allocation of water to California represented by the decree of the United States District Court for the Northern District of California in United States of America v. Sierra Valley Water Company, Civil No. 5597 is confirmed.

(c) NEVADA ALLOCATION - There is allocated to the State of Nevada all water in excess of the allocations made in subsections (a) and (b) of this subsection.

(d) EFFECT OF CALIFORNIA ALLOCATION - The allocation of water to California under this section shall not form the basis of additional claims against water right holders by the Tribe under the Endangered Species Act.

SEC. 104. COMPLIANCE WITH INTERSTATE ALLOCATIONS.

~~The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement for administering the allocations made under this title.~~

Each State shall be responsible for assuring compliance with the allocations made by this title to such state. Within the third quarter following the end of each calendar year, each state shall publish a report of water use for its portion of each basin to which water is allocated by this title.

SEC. 105. FORFEITURE OR ABANDONMENT NOT TO AFFECT ALLOCATIONS.

The forfeiture for nonuse or abandonment of water rights under the applicable law of each State shall not affect the allocations to each State made by this title.

Sec. 106. VOLUNTARY INTERSTATE TRANSFERS.

(a) Nothing contained herein shall prevent the voluntary interstate transfer of water or water rights by the holder thereof, within the basins subject to the provisions of this Act; provided, that each such transfer shall comply with all state laws applicable to transfer of water or water rights, including but not limited to state laws regulating change in point of diversion, place of use, and purpose of use of water. Diversion and use of water so transferred shall be charged to the allocation of the state from which such water or water rights are transferred.

(b) Each State may establish reasonable criteria and procedures to regulate the voluntary interstate transfer from an area within such state of water or water rights within the basins governed by this Act. Such criteria may include, but need not be limited to, requirements for findings by an appropriate officer or agency that a transfer would not unreasonably affect the environment or overall economy of the area from which the use of water or a water right is being transferred, and that such a transfer is otherwise in the public interest.

Sec. 107. USE OF WATER BY THE UNITED STATES

The use of water by the United States of America or any of its agencies, instrumentalities or Indian Tribes shall be charged to the allocation of the state wherein the use is made, except as otherwise provided in section 106 of this Act.

Sec. 108. COURT DECREES --

Nothing in this Title shall be construed as modifying or terminating any court decree, or the jurisdiction of any court, or as affecting the applicability of state law and procedures to the water allocated hereunder.

Sec. 109. PLACE OF USE TO DETERMINE ALLOCATION --

Water diverted or extracted in one state for use in the other shall be charged to the allocation under this Title of the State in which the water is used, except as otherwise provided in Section 106 of this Act.

CALIFORNIA AMENDMENT
to
Section 3(4) of S.1554

(4) the term "Operating Agreement" means the agreement ~~described on page 24, paragraph (f) of the Preliminary Settlement Agreement;~~ to be executed by and between the Secretary, the State of California, the State of Nevada, the Tribe, and the Sierra-Pacific Power Company, the provisions of which are to include:

(i) the organization and procedures of the administrative body which will assure compliance with the provisions of Title I, Title II, and Sections 602 (e) and (f),

(ii) criteria which form the basis for the development and administration of a plan of operation for the Truckee River System to satisfy all applicable water use entitlements, together with the allocations made by Title I; to improve the operational efficiency and environmental quality of the Truckee River System; and for the administration of water use entitlements in accordance with existing laws, regulations, decrees, and the provisions of this Act,and

(iii) procedures for resolving disputes among parties to the operating agreement.

Senator **Bradley**. Thank you very much, Mr. Kennedy, for being right to the point, as usual.

Ms. Colling.

STATEMENT OF CECILIA COLLING, EXECUTIVE ASSISTANT TO GOVERNOR BOB MILLER, STATE OF NEVADA

Ms. **Colling**. Hello, Mr. Chairman, and members of the Committee. My name is Cecilia Colling, Executive Assistant. It is my pleasure to appear here today on behalf of Bob Miller, Governor of the State of Nevada, and to offer these comments on S. 1554. A more detailed position paper by the State of Nevada is being submitted for the record.

I congratulate and compliment the United States Senator Harry Reid for his efforts in developing this legislation to implement and settle involving water supplies of the Truckee and Carson Rivers and Lake Tahoe.

The original goals of the State of Nevada, and I believe other parties participating in the negotiation efforts leading to this legislation, were one, a resolution of any state issues; two, provisions for drought year water supply for Rene, Sparks, Truckee Meadows area to satisfy existing as well as future development; three, a resolution of the division of water between the lower Carson River area and Pyramid Lake; four, the ability and timing of water supplies to protect the recreation resource of the Lahontan Reservoir and the wildlife areas in the Lahontan Valley near Fallon; five, to resolve and provide for the dismissal of current litigation, and to extend, if possible, litigation for the future involving the water supplies of the Carson-Truckee Rivers and Lake Tahoe.

Although not all of these goals are specifically addressed in the legislation before you, major steps have been made in the legislation for practical purposes. It will provide for the resolution of interstate issues. Similarly, upon meeting the requirements set forth in the legislation, there will be in place provisions for a drought year water supply for the Reno, Sparks, Truckee Meadows area. There will be in place procedures for dismissal of ongoing litigation. There will be provisions for protection and enhancement of the endangered species in the lower Truckee River system and Pyramid Lake. And, very importantly, there will be provisions for the acquisition of water rights to protect the valuable wetlands in the Lahontan Valley.

In 1983 the Nevada State Legislature authorized the issuance of up to $8 million as the State's share of the cost for projects to conserve water. The authority for issuance of such funds to assist in facilitating settlement remains in effect. Obviously, the task will not be completed with the enactment of this legislation. There are serious and tremendous efforts ongoing to expedite and conclude the development of a conservation plan and operating agreement.

I commend to you for your consideration the proposed amendments to Title I of S. 1554 relating to interstate water apportionment provisions. You have heard and will be hearing extensive testimony, including suggested amendments to other provisions of the bill under consideration. Obviously many diverse interests have attempted to come together to resolve what has been a long standing controversial issue in eastern California and western Nevada.

I urge you, through considerations of proposed amendments and a balancing of views, to assure the best and most possible product that will result in a resolution and settlement of these long term outstanding water issues on the Truckee and Carson Rivers and Lake Tahoe. The State of Nevada is committed to continue to work with the Committee, other committees of the Congress, and the Congress itself to ultimately conclude this issue in a positive and satisfactory manner.

Thank you for allowing me to participate, and if I can answer questions I would be happy to.

[The prepared statement of Ms. Colling follows:]

February 6 1990

STATE OF NEVADA
POSITION STATEMENT
S.1554

The most recent negotiations and discussions resulting in this bill followed repeated attempts over a period of years to arrive at a resolution and settlement through similar discussions and negotiations. Each time the parties reached a certain point of impasse, negotiations were terminated and concluded.

It remains imperative to resolve existing and potential interstate and intra-state conflicts to provide a lasting and equitable resolution of issues involving the rights to the waters of the Carson and Truckee rivers and Lake Tahoe.

The State of Nevada's initial and continuing position was that the negotiated settlement should result in (1) resolution of interstate issues; (2) provisions for drought year water supply for the Reno, Sparks, Truckee Meadows area to satisfy existing as well as future development; (3) a resolution of the division of water between the Lower Carson River area and Pyramid Lake; (4) availability and "timing" of water supplies to protect the recreation resource of Lahontan Reservoir and the wildlife areas in Lahontan Valley near Fallon; (5) resolution and settlement of outstanding litigation and claims and the foreclosure and prohibition of litigation in the future to the extent possible.

Representatives of the States of Nevada and California with due consideration of views of other parties have agreed to amendments to provisions to be included in Title I, "Interstate Water Apportionment Provisions". These provisions have been formulated to provide each of the States of California and Nevada their equitable share of the interstate waters of Lake Tahoe and the Carson and Truckee Rivers.

Attached is a copy of "Joint California-Nevada Amendments to Title I - Interstate Water Apportionment Provisions to the December 29, 1989" which are to be substituted for the original provisions of Title I of S.1554. (As recently as January 30, 1990, there was agreement on several amendments to these provisions. These amendments will be furnished to the Committee.)

Section 101, "The Carson River" confirms the Federal District Court Alpine Decree and includes other provisions recognizing existing uses of water in both states and further provides for municipal and industrial water uses in Nevada.

Section 102, "The Lake Tahoe Basin" addresses an issue of longstanding concern. It is essential that there be established an allocation of water for use in the Lake Tahoe Basin. This accomplishes two purposes. It establishes an upper limit on the one hand and provides an authority for use of water under established state procedures on the other hand.

The basic allocation of 23,000 acre feet annually allocated to the State of California and 11,000 acre feet annually allocated to the State of Nevada has been accepted by both states and water users in both states over a period of many years. Transbasin diversions to the extent they are recognized as vested or permitted rights are also included in the allocation.

Section 103, "The Truckee River" provides an allocation for diversion and use of water in the State of California subject to certain uses in the State of Nevada. It also recognizes and allocates water to satisfy the conditions of a Federal District

Court Decree relating to Sierra Valley. This section also provides that waters not specifically allocated for use in the State of California are allocated to the State of Nevada to accomplish the allocation between the two states.

Section 104, "Compliance With Interstate Allocations" provides a very basic and simplified approach to assure compliance with the interstate allocations set forth.

Section 105, "Forfeiture or Abandonment Not To Affect Allocations" simply addresses the issue of forfeiture or nonuse or abandonment of water rights and affects on allocations.

Section 106, "Voluntary Interstate Transfers" provides that nothing in the allocation provisions shall prevent voluntary interstate transfer of waters subject to certain provisions and conditions.

Section 107, "Use of Water By the United States" provides that the use of water by the United States or any of its agencies, instrumentalities or Indian tribes shall be charged to the allocation of the state wherein the use is made except as provided in the section relating to voluntary interstate transfers. This concept and provision have been a matter of longstanding agreement between representatives of the States of Nevada and California and other interested parties.

Section 108, "Court Decrees" includes protections that nothing in Title I shall modify or terminate any court decree or affect the applicability of state law.

Section 109, "Place of Use to Determine Allocation" essentially provides that water shall be charged to the state where the actual use occurs.

Although other parties are obviously interested in the resolution of interstate issues, this responsibility was primarily accepted by representatives of the States of California and Nevada.

Other parties to the negotiated settlement and interested groups and water users will be submitting detailed comments and recommendations and suggested changes on the other provisions of S.1554.

The position of the State of Nevada on many of those issues was included in a draft of legislation submitted to Wayne Mehl, Legislative Director in the office of Senator Harry Reid by letter of August 1, 1989. (Copies of that letter and the draft of legislation are attached hereto.)

Subsequently, S.1554 was introduced on August 4, 1989. There were numerous discussions, meetings and exchange of information and comments between negotiating parties and other interests from that time.

The following are comments on Title II, "Truckee River Water Supply Management".

Section 201, "Implementation of Water Supply Agreements" must be carefully considered and evaluated. Provisions of the preliminary settlement agreement and anticipated operating agreement are obviously critical to the effectiveness of the entire settlement effort. Provision of the operating agreement must be considered to assure that rights of water users and water supplies for various areas are afforded necessary consideration and protection. Implementation of the operating agreement must be in conformance with state water law procedures.

It is important that the States of California and Nevada be signatory to the operating agreement to assure consistency with interstate allocations and other provisions of the overall settlement.

Because it is anticipated that the operating agreement will result in modifications to the Truckee River agreement, consideration of views of the Truckee-Carson Irrigation District and the Fallon Tribe in development of an operating agreement is encouraged.

It is essential that the Orr Ditch Court and General Electric Court approve any proposed modifications in river operations.

It is necessary to include a section addressing "Administrative Provisions". It is the State of Nevada's position that the operating agreement shall be submitted to the Orr Ditch Court for its approval and when approved and adopted by the Court, shall be made a part of the Orr Ditch Decree in the same manner as the Truckee River agreement. The operating agreement shall be administered by the Federal Water Master and the Orr Ditch Court.

Title III, "Wetlands Protection". This addresses one of the original goals of providing protection of the wildlife areas. It is emphasized that all water rights purchased shall be transferred and excercised in accordance with state law.

Title IV, "Cui ui and Lahontan Cutthroat Trout Enhancement Program". Section 401, "Transfer of Fallon Naval Air Station

Water Rights" must include a provision that any transfer shall be in compliance with the requirements of the water laws of the State of Nevada.

It is also recommended that there be consideration of another section of this Title to provide for a Lower Truckee River rehabilitation project with specific criteria relating to restoration of the riparian habitat and vegetative cover to provide improved spawning for the cui-ui and Lahontan Cutthroat trout.

There should also be consideration of a section addressing delta access facilities. Similarily, if such sections were included, there should be authorization of appropriations for both the rehabilitation and delta facilities.

Section 404, "Recovery Plans" and the criteria for such plans should be subject to the provisions of the interstate allocations, transfer of any water rights of the Fallon Naval Air Station, the construction of delta facilities and should take account of any other programs in the event of the enhancement of the Pyramid Lake fishery.

Title VI, "Miscellaneous Provisions". Section 601, "Claim Settlement" must specifically provide for the dismissal with prejudice of all outstanding litigation and preclude litigation in the future. For example, the following is suggested for an inclusion in this section, "Any claim of the Tribe or the United States to alter the nature or use of existing water rights or to otherwise obtain additional water for the Tribe, the Pyramid Lake Indian reservation, or the Pyramid fishery and any claim of the Tribe or the United States to alter the operation of the Truckee River or Truckee River reservoirs in a manner inconsistent with the Operating Agreement are extinguished and barred."

Section 602, "General Provisions":

a) It is not appropriate to interject issues addressing land status in this water settlement legislation.

b) It is not appropriate to interject hunting and fishing jurisdiction issues in this legislation.

c) This provision regarding trust responsibility does not seem appropriate.

d) No comment

e) The subject of storage in Stampede and Prosser Reservoirs should be considered in development of the Operating Agreement.

f) This provision is acceptable and appropriate with the reference to Titles II, III, IV, V and VI.

Section 603, "Effective Date" provisions proposed are acceptable and appropriate.

GENERAL COMMENTS

It is the position of the State of Nevada and must be clearly understood that the settlement agreement proposed in this legislation recognize the jurisdiction and authority of Federal Courts to administer existing decrees and the authority of the respective water administrative agencies in each state to administer the water laws of the respective states.

Similarily any action contemplated or proposed in this agreement must be strictly in accordance with the provisions of those decrees and water right procedures.

It is encouraged that, if possible, agreement on the Newlands Project operating criteria and procedures by the State of Nevada, the Pyramid Tribe, the Fallon Tribe, the Newlands Project water users, the Truckee-Carson Irrigation District and the Secretary be reached prior to the effective date.

Another major issue is the matter of a water supply and attendant right for Pyramid Lake. It is the position of the State of Nevada that any such right must be obtained and acquired under the statutory state water appropriation procedures. The state will not agree to an allocation of water specifically to the Tribe or to Pyramid Lake by virtue of inclusion of such provision in the proposed legislation.

It must also be made clear to all interests that in processing S.1554 and any amendments thereto that tremendous responsibilities are being placed upon all interests and water users for the development of an acceptable operating agreement.

Persons, entities and water users who will rely on the provisions of this settlement legislation must be aware of and recognize the time and effort that will be required to conclude and secure approval of the operating agreement and other requirements set forth in the proposed legislation.

101st CONGRESS
1st SESSION

S. 1554

JOINT CALIFORNIA-NEVADA AMENDMENTS
To Title I - Interstate Water Apportionment Provisions
December 29, 1989

Deletions to text shown in ~~strikeout~~.
Additions to text shown in underline.
Centered number in text corresponds to bill page number.

IN THE SENATE OF THE UNITED STATES

August 4 (legislative day, January 3), 1989
Mr. REID introduced the following bill;
which was read twice and referred to the
Committee on Energy and Natural Resources

A BILL

To ratify and implement water Settlements involving the Pyramid Lake Paiute Tribe, the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act".

TITLE I-INTERSTATE WATER APPORTIONMENT PROVISIONS

SEC. 101. THE CARSON RIVER.

(a) CONFIRMATION OF COURT ALLOCATION.-The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine Decree is confirmed.

(b) FURTHER ALLOCATIONS.-(1) In addition to the allocations referred to in subsection (a), the States of California and Nevada are further allocated sufficient water from the Carson River and its tributaries to serve beneficial uses which are not encompassed in the Alpine Decree and were initiated prior to the effective date of this Act. The total amount of water allocated by this subsection shall not exceed one thousand five hundred acres-feet per annum by depletion for use in California and two thousand one hundred and thirty-one acre-feet per annum by depletion for use in Nevada.

(2) RIGHT TO COMPENSATION FOR DISCONTINUANCE.---If all or any portion of the effluent imported from the Lake Tahoe Basin into the watershed of the Carson River in California on or after the effective date of this Act is discontinued by reason of the disposal of such effluent, including underground disposal, within the Truckee River Basin or the Lake Tahoe Basin, the allocation to California of the waters of the Carson River and its tributaries for use in Cali-

fornia shall be augmented by an amount of water, not to exceed 2000 acre-feet per year, which may be diverted to storage until rotation occurs under provisions of the the Alpine Decree, which will compensate California for any such discontinuance: Provided, That any such augmentation shall be for use only on lands to which rights decreed by the Alpine Decree are appurtenant: Provided further, That nothing in this Act shall be construed to prohibit the continued use of all or any portion of such effluent on lands within California.

~~(c) APPLICATION OF STATE LAWS. Nothing in this section shall preclude application of the laws of the States relating to abandonment or forfeiture of water rights for nonuse.~~

~~(d) VOLUNTARY INTERSTATE TRANSFERS. The States of California and Nevada, the Tribe, and the Secretary may negotiate an agreement permitting the voluntary interstate transfer of water of water rights for use within the Carson River Basin. Any such agreement shall, prior to implementation, first be approved by the appropriate water right administration authority of each State pursuant to the State laws applicable to transfer of water or water rights.~~

~~(e) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA. Nothing in this Act precludes the States of California and Nevada, the Tribe, and the Secretary from negotiatig an agreement that permits the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the State of Nevada on~~

~~the Carson River or its tributaries that result in inundation of lands in California: Provided further, That this agreement may~~

(c) STUDIES OF CONJUNCTIVE USE -- Nothing in this Act shall foreclose the right of either state to study, either jointly or severally, the appropriation of unappropriated water which would otherwise be lost to beneficial use, including use on federally owned or operated wildlife refuges within the Carson River system, to enable conjunctive use of ground water.

(d) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA - Nothing in this Act precludes the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the Carson River Basin, provided that such storage facilities shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(e) This Act:

(1) recognizes and confirms the right to change the beneficial use of water from irrigation to storage for municipal and industrial ~~and related~~ uses: Provided, That such changes are in accordance with the Alpine Decree,

(2) permits water stored under this procedure to be diverted to storage in a given year and held for use in that or subsequent years, and

(3) confirms the historic practice for operation of reservoirs identified on pages 145 and 146 of the Alpine Decree to store, release, and use quantities of water determined by the capacity of the reservoirs and the yield of the tributary basins.

~~(f) Nothing in this section shall be construed as modifying or terminating any court decree or as affecting the applicability of State law and procedures to the water allocated hereunder.~~

SEC. 102. THE LAKE TAHOE BASIN.

(a) ANNUAL GROSS DIVERSION TOTALS.- The total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in the basin shall not exceed thirty-four thousand acre-feet annually, of which---

(1) twenty-three thousand acre-feet annually are allocated to the State of California for use within the Lake Tahoe Basin; and

(2) eleven thousand acre-feet annually are allocated to the State of Nevada for use within the Lake Tahoe Basin.

After use of the water allocated in this subsection such water may be exported from the Lake Tahoe Basin or reused.

(b) DETERMINATION OF GROSS DIVERSION.-The ~~States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement on the manner in which the gross diversion amounts under section (a) will be determined. The agreement shall include the following provisions:~~ total annual gross diversions for use under subsection (a) shall be determined subject to the following conditions:

(1) Water diverted and used to make snow shall not ~~count against~~ be charged to the gross diversion allocation of either California or Nevada unless and to the extent that the snow is produced for use outside the basin.

(2) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's or Nevada's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per annum.

(3) Where water is diverted by a distribution system, as defined by (iii) below, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) Where a water distribution system supplies any municipal, commercial, and/or industrial points of delivery to use which are not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source.

(ii) Where all municipal, commercial, and/or industrial points of delivery to use (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured as the sum of all amounts of water supplied to each such point of delivery to use.

(iii) As used in this subsection, the term "water distribution system" means a point or points of diversion from a water supply source or sources together with associated piping which serve a number of identifiable points of delivery to use, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system;

(4) Water inflow and/or infiltration to sewer lines is not a diversion of water, and such water shall not be charged to the gross diversion allocation of either state.

(5) Regulation of stream flow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either state.

(c) TRANSBASIN DIVERSIONS.-(1) The transbasin diversions from the Lake Tahoe Basin in Nevada and California identified in paragraph (2) below, may be continued, to the extent that such diversions are recognized as vested or permitted rights under the laws of the State where each diversion is made. Unless otherwise provided in this section, such diversions are in addition to the other allocations made by this section.

(2) The transbasin diversions referred to in paragraph (1) above are---

(A) the diversion of a maximum of three thousand acre-feet per annum from Marlette Lake for use in Nevada;

(B) the diversion of a maximum of five hundred and sixty-one acre-feet per annum from Lake Tahoe for use in Nevada, except that such diversion shall count against the allocation to Nevada made by this section;

(C) the diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) the diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

(3) The transbasin diversions identified in paragraph (2) may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or permitted. Water made available for use within the ~~basin~~ Lake Tahoe Basin as a result of any such transfer shall not count against the allocations made by this section, and such water may be depleted.

(d) ~~EFFECT OF ALLOCATION OF CERTAIN WATER.~~ ~~(1) Water imported from any source outside the Lake Tahoe basin shall not count against the allocation made by this section but shall count against the allocation, if applicable, of the basin of origin.~~

~~(2) Water diverted or extracted in one State for use in the other shall count against the allocation under this section of the State in which the water is used.~~

SEC. 103. THE TRUCKEE RIVER

~~The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement allocating the waters of the Truckee River basin between California, Nevada, and the Tribe. The allocation of water to California under this section shall not form the basis for additional claims of water from any water right holders by the Tribe under the Endangered Species Act.~~

(a) CALIFORNIA TRUCKEE BASIN ALLOCATION - (1) There is allocated to California the right to divert and/or extract, and to utilize any combination thereof, within the Truckee River Basin in California 16,000 acre-feet of water per calendar year by depletion, without regard to whether the source of supply for such diversion or extraction is surface water or ground water.

(2) Within one year following the issuance by the State of California of an annual report of water use for the Truckee River Basin, pursuant to Section 104, which shows that the gross diversion or extraction within the Truckee River Basin in California equals or exceeds 16,000 acre feet, representatives of the States of California and Nevada, of the Tribe, and the Secretary shall negotiate an agreement which establishes the relationship between the amount of water diverted or extracted and the amount of water depleted. The entitlement of the State of California to divert and/or extract 16,000 acre feet by depletion shall thereafter be governed by that agreement.

(3) Diversions of water from surface supplies pursuant to this subsection shall be subject to the following Nevada uses:

(A) All such surface diversions shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in the Orr Ditch Decree.

(B) Diversion for use within California initiated after the effective date of this Act shall also be subject to the right of the Sierra Pacific Power Company, or its successor, to divert 40 cubic feet per second of water for municipal and domestic use in the Truckee Meadows in Nevada, as said right is more particularly described in Article V of the Truckee River Agreement.

(4) The water allocated to California pursuant to this subsection may be diverted directly to beneficial use or diverted to storage in reservoirs.

(b) SIERRA VALLEY, CALIFORNIA - The allocation of water to California represented by the decree of the United States District Court for the Northern District of California in United States of America v. Sierra Valley Water Company, Civil No. 5597 is confirmed.

(c) NEVADA ALLOCATION - There is allocated to the State of Nevada all water in excess of the allocations made in subsections (a) and (b) of this subsection.

(d) EFFECT OF CALIFORNIA ALLOCATION - The allocation of water to California under this section shall not form the basis of additional claims against water right holders by the Tribe under the Endangered Species Act.

SEC. 104. COMPLIANCE WITH INTERSTATE ALLOCATIONS.

~~The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement for administering the allocations made under this title.~~

Each State shall be responsible for assuring compliance with the allocations made by this title to such state. Within the third quarter following the end of each calendar year, each state shall publish a report of water use for its portion of each basin to which water is allocated by this title.

SEC. 105. FORFEITURE OR ABANDONMENT NOT TO AFFECT ALLOCATIONS.

The forfeiture for nonuse or abandonment of water rights under the applicable law of each State shall not affect the allocations to each State made by this title.

Sec. 106. VOLUNTARY INTERSTATE TRANSFERS.

(a) Nothing contained herein shall prevent the voluntary interstate transfer of water or water rights by the holder thereof, within the basins subject to the provisions of this Act; provided, that each such transfer shall comply with all state laws applicable to transfer of water or water rights, including but not limited to state laws regulating change in point of diversion, place of use, and purpose of use of water. Diversion and use of water so transferred shall be charged to the allocation of the state from which such water or water rights are transferred.

(b) Each State may establish reasonable criteria and procedures to regulate the voluntary interstate transfer from an area within such state of water or water rights within the basins governed by this Act. Such criteria may include, but need not be limited to, requirements for findings by an appropriate officer or agency that a transfer would not unreasonably affect the environment or overall economy of the area from which the use of water or a water right is being transferred, and that such a transfer is otherwise in the public interest.

Sec. 107. USE OF WATER BY THE UNITED STATES

The use of water by the United States of America or any of its agencies, instrumentalities or Indian Tribes shall be charged to the allocation of the state wherein the use is made, except as otherwise provided in section 106 of this Act.

Sec. 108. COURT DECREES --

Nothing in this Title shall be construed as modifying or terminating any court decree, or the jurisdiction of any court, or as affecting the applicability of state law and procedures to the water allocated hereunder.

Sec. 109. PLACE OF USE TO DETERMINE ALLOCATION --

Water diverted or extracted in one state for use in the other shall be charged to the allocation under this Title of the State in which the water is used, except as otherwise provided in Section 106 of this Act.

ROLAND D. WESTERGARD, *Director*

Address Reply To
Capitol Complex
Nye Building, 201 S. Fall Street
Carson City, Nevada 89710
Telephone (702) 885-4360

~~RICHARD H. BRYAN~~
Governor

DIVISIONS
Conservation Districts
Environmental Protection
Forestry
Historic Preservation and Archeolog
State Lands
State Parks
Water Planning
Water Resources
COMMISSIONS
State Conservation Commission
State Environmental Commission

STATE OF NEVADA

Department of Conservation and Natural Resources
OFFICE OF THE DIRECTOR
CARSON CITY, NEVADA 89710

August 1, 1989

Wayne Mehl, Legislative Director
Senator Harry Reid
United States Senate
Washington, D.C. 20510

Dear Wayne:

Enclosed is a revised draft of the proposed Federal Settlement Legislation which was developed last Friday July 28, 1989, by Gordon DePaoli, Sue Oldham, Harold Swafford, Jack Hoffman and myself.

We hope you will find this material timely and helpful in preparation of legislation to be introduced. We have continuing concerns and admittedly are not totally satisfied with specific language in the enclosed, but it does address critical revisions and sets forth our general position on provisions included in your draft transmitted by your letter of July 12, 1989.

An example of continuing concerns relates to the advisability of a provision dealing with the National Environmental Policy Act. We would appreciate the opportunity to submit a proposal on this subject.

Sincerely,

Roland

ROLAND D. WESTERGARD
Director

RDW:vjw
Enclosure

DRAFT
7/31/89

SEC. 1 TITLE

SEC. 2 FINDINGS AND PURPOSES

SEC. 3 DEFINITIONS

For purposes of this Act -

(1) the term "Secretary" means the Secretary of the Interior.

(2) the term "Tribe" means the Pyramid Lake Paiute Tribe of Indians.

(3) the term "Preliminary Settlement Agreement" means the agreement signed by the Tribe and Sierra Pacific Power Company on May 23, 1989.

(4) the term "Operating Agreement" means the agreement described on page 24, paragraph (f) of the Preliminary Settlement Agreement.

(5) the term "Conservation Plan" means the plan referred to in section 3(1) of Chapter _______ of the 1989 Statutes of Nevada and which implements the provisions of subsection 29(e) of the Preliminary Settlement Agreement.

(6) the term "Lower Truckee River" means the Truckee River below Derby Dam.

(7) the term "Alpine Decree" means the decree entered October 28, 1980, by the United States District Court for the District of Nevada in United States of America v. Alpine Land and Reservoir Company, Civil No. D-183.

(8) the term "Orr Ditch Decree" means the decree entered September 8, 1944, by the United States District Court for the

District of Nevada in United States of America v. Orr Water Ditch Company, et al. - in Equity, Docket No. A3.

(9) the term "Orr Ditch Court" means United States District Court of Nevada acting pursuant to its continuing jurisdiction over the Orr Ditch Decree.

(10) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River.

(11) the term "Lake Tahoe Basin" means the drainage area naturally tributary to Lake Tahoe, including the area above the dam at the outlet to the Truckee River.

(12) the term "Truckee River Basin" means the Truckee River and its tributaries, including such reservoirs or other storage facilities that feed waters into the Truckee River, but excluding the Lake Tahoe Basin.

(13) the term "Federal Water Master" means the individual appointed by the Orr Ditch Court to carry out and enforce the provisions of the Orr Ditch Decree and the instructions and orders of the Court pertaining to the Orr Ditch Decree.

(14) the term "Truckee River General Electric Decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in United States of America v. Truckee River General Electric Co., No. 14861, which case was transferred to the United States District Court for the

Eastern District of California on February 9, 1968, and is now designated No. S-643.

(15) the term "Carson River Basin" means the area which naturally drains into the Carson River and its tributaries and to the Carson River Sink, but excluding the Humboldt River drainage area.

(16) the term "Truckee River Reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir and Stampede Reservoir.

(17) the term "Truckee River General Electric Court" means the court having continuing jurisdiction over the Truckee River General Electric Decree.

(18) the term "Pyramid Lake Fishery" means the two primary species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi).

TITLE I - INTERSTATE WATER APPORTIONMENT PROVISIONS

SEC. 101 THE CARSON RIVER.

(a) CONFIRMATION OF COURT ALLOCATION - The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine Decree is confirmed.

(b) FURTHER ALLOCATIONS - (1) In addition to the allocations referred to in subjection (a), the States of California and Nevada are further allocated sufficient water from the Carson River and its tributaries to serve beneficial uses which are not encompassed in the Alpine Decree and were initiated prior to the effective date of this Act. The total amount of water allocated by this subsection shall not exceed 1,500 acre-feet per annum by depletion for use in California and 2,131 acre-feet per annum by depletion for use in Nevada.

(2) RIGHT TO COMPENSATION FOR DISCONTINUANCE - If all or any portion of the effluent imported from the Lake Tahoe Basin into the watershed of the Carson River in California on or after the effective date of this Act is discontinued by reason of the disposal of such effluent, including underground disposal, within the Truckee River Basin or the Lake Tahoe Basin, the allocation to California of the waters of the Carson River and its tributaries for use in California shall be augmented by an among of water which will compensate California for any such discontinuance; provided that any such augmentation shall be for use only on lands to which rights decreed by the Alpine Decree are appurtenant; and, provided further, that nothing in this Act shall be construed to prohibit the continued use of all or any portion of such effluent on lands within California.

(c) VOLUNTARY INTERSTATE TRANSFERS - (1) Nothing in this section shall prevent the voluntary interstate transfer of water or water rights for use within the Carson River Basin. Any such transfer shall, prior to implementation, first be approved by the appropriate water right administration authority of each State pursuant to the State laws applicable to transfer of water or water rights and pursuant to the Alpine Decree.

(d) STUDIES OF CONJUNCTIVE USE - Nothing in this Act shall foreclose the rights of either state to study, either jointly or severally, the appropriation of unappropriated water which would otherwise be lost to beneficial use, including federally owned or operated wildlife refuges within the Carson River system, to enable conjunctive use of ground water.

(e) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA - Nothing in this Act precludes the State of Nevada, agencies of the state, and private entities and individuals from constructing storage facilities within the State of Nevada on the Carson River or its tributaries that results in inundation of lands in California.

(f) This Act:

(1) recognizes and confirms the right to change the beneficial use of water from irrigation to storage for municipal and industrial uses provided that such changes are in accordance with the Alpine Decree.

(2) permits water stored under this procedure to be diverted to storage in a given year and held for use in that or subsequent years, and

(3) confirms the historic practice for operation of reservoirs identified on pages 145 and 146 of the Alpine Decree to store, release and use quantities of water determined by the capacity of the reservoirs and the yield of the tributary basins.

(g) Nothing in this section shall be construed as modifying or terminating any court decree or as affecting the applicability of state law and procedures to the water allocated hereunder.

SEC. 102 THE LAKE TAHOE BASIN

(a) ANNUAL GROSS DIVERSION TOTALS - The total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in the Lake Tahoe Basin shall not exceed 34,000 acre-feet annually, of which -

(1) 23,000 acre-feet annually is allocated to the State of California for use within the Lake Tahoe Basin; and

(2) 11,000 acre-feet annually is allocated to the State of Nevada for use within the Lake Tahoe Basin.

After use of the water allocated in this subsection such water may be exported from the Lake Tahoe basin or reused.

(b) DETERMINATION OF GROSS DIVERSIONS - The total annual gross diversions for use under subsection (a) shall be determined subject to the following conditions:

(1) Water diverted and used to make snow, not to exceed 600 acre-feet per annum in each State, shall not be charged to the gross diversion allocations of either California or Nevada unless and to the extent that the snow is produced for use outside the Lake Tahoe Basin; provided, that twenty-five percent of the amount of water diverted and used to make snow in excess of 600 acre-feet per annum in either State shall be charged to the gross diversion allocation of the State in which the snow is used.

(2) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's or Nevada's gross diversion, be conclusively presumed

to utilize a gross diversion of four-tenths of one acre-foot per residence per annum.

(c) TRANSBASIN DIVERSIONS - (1) The transbasin diversions from the Lake Tahoe Basin in Nevada and California identified in paragraph (2), may be continued, to the extent that such diversions are recognized as vested or permitted rights under the laws of the State where each such diversion is made. Unless otherwise provided in this section, such diversions are in addition to the other allocations made by this section.

(2) The transbasin diversions referred to in subparagraph (1) are -

(A) the diversion of a maximum of 3,000 acre-feet per annum from Marlette Lake for use in Nevada;

(B) the diversion of a maximum of 561 acre-feet per annum from Lake Tahoe for use in Nevada, except that such diversion shall be charged to the allocation to Nevada made by this section;

(C) the diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) the diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

(3) The transbasin diversions identified in subparagraph (2) may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or

permitted. Water made available for use within the Lake Tahoe Basin as a result of any such transfer shall not count against the allocations made by this section, and such water may be depleted.

(d) EFFECT OF ALLOCATION OF CERTAIN WATER - (1) Water imported from any source outside the Lake Tahoe Basin shall not be charged to the allocations made by this section but shall be charged, if applicable, to the allocations of the basin of origin.

(2) Water within the Lake Tahoe Basin diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used.

SEC. 103 THE TRUCKEE RIVER.

(a) CONFIRMATION OF COURT ALLOCATION. The interstate allocation of waters of the Truckee River and its tributaries represented by the Orr Ditch Decree is confirmed.

(b) CALIFORNIA ALLOCATION - (1) [To be supplied]

(2) The allocation of water represented by the decree of the United States District Court for the Northern District of California in United States of America v. Sierra Valley Water Company, Civil No. 5597 is confirmed.

(c) There is allocated to Nevada all water in excess of the allocations made in subsection (b) of this section, including without limitation:

(i) Water stored in Truckee River Reservoirs in the Truckee River Basin for release to Nevada; and

(ii) Water stored in Donner Lake and Independence Lake for release to Nevada.

(d) INTERSTATE TRANSFERS. For a period of five (5) years after the effective date of this Act, the point of diversion, place, means, manner or purpose of use of the water allocated to California by subsection (b)(2) above may be changed to a point, place and municipal use in the State of Nevada and to the extent thereof said water shall thereafter be deemed to be allocated to the State of Nevada; provided, however, that no such change may take place unless it is consented to by a resolution passed by the Board of Supervisors of Sierra County, California. Any such transfer shall, prior to implementation, first be approved by the California State Water Resources Control Board. If such transfer is not so approved by five (5) years after the effective date of this Act, then such water may not thereafter be transferred and allocated to the State of Nevada. No other interstate transfers of water or water rights of the Truckee River Basin shall be permitted.

(e) Nothing in this section shall be construed as modifying or terminating any court decree or as affecting the applicability of state law and procedures to the water allocated hereunder.

SEC. 104 COMPLIANCE WITH INTERSTATE ALLOCATIONS.

(a) Each state shall conduct such monitoring as is necessary to insure compliance with all of the water allocation provisions in this title.

SEC. 105 FORFEITURE OR ABANDONMENT NOT TO AFFECT ALLOCATIONS.

The forfeiture for nonuse or abandonment of water rights under the applicable law of each state shall not affect the allocations to each state made by this title.

SEC. 106 USE OF WATER BY THE UNITED STATES

The use of water by the United States of America or any of its agencies, instrumentalities or Indian Tribes shall be charged to the State wherein the use is made.

TITLE II - TRUCKEE RIVER MANAGEMENT

SEC. 201 IMPLEMENTATION OF AGREEMENTS

(a) The Secretary shall enter into such contracts as are required to carry out the terms and provisions of the Preliminary Settlement Agreement and the Operating Agreement, including, without limitation, contracts for the use of space in Truckee River Reservoirs for purposes of storing and exchanging water, provided that:

(1) California, Nevada, the Tribe, the Truckee-Carson Irrigation District, Sierra Pacific Power Company, and the United States have executed the Operating Agreement;

(2) the Orr Ditch Court and Truckee River General Electric Court have approved any proposed modifications in river operations, including storage and exchange of water, that would modify any provision in the Orr Ditch Decree or the Truckee River General Electric Decree;

(3) all applicable dam safety and flood control requirements are met; and

(4) all storage and releases required to satisfy the rights set forth in the Orr Ditch Decree and Truckee River General Electric Decree are met.

SEC. 202 ADMINISTRATIVE PROVISIONS

The Operating Agreement shall be submitted to the Orr Ditch Court for its approval and, when approved and adopted by the court, shall be made a part of the Orr Ditch Decree in the same manner as the Truckee River Agreement. The Operating Agreement shall be administered by the Federal Water Master and the Orr Ditch Court.

TITLE III - WETLANDS PROTECTION

SEC. 301 AUTHORIZATION TO PURCHASE WATER RIGHTS.

(a) IN GENERAL - The Secretary is authorized to purchase water rights within the State of Nevada to benefit federal and state wildlife areas in the Lahontan Valley and the Fernley Sink in Nevada in accordance with the provisions of this section.

(b) CONDITIONS - The purchase of water rights pursuant to this section shall be subject to the following conditions:

(1) Water rights purchased from within the Truckee-Carson Irrigation District must be eligible to receive water under the Operating Criteria and Procedures for the Newlands Reclamation Project in effect at the time of such purchase. [redacted]

(2) Water rights shall be purchased from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such purchase program.

(3) All water rights purchased shall be transferred in accordance with State law.

(4) Water rights purchased shall be managed by the Secretary through the United States Fish and Wildlife Service in cooperation with the State of Nevada.

(5) The Secretary shall reimburse non-federal entities, including, but not limited to the Truckee-Carson Irrigation District, for the full operation and maintenance charges associated with the water rights purchased.

(c) CONSTRUCTION OF THE SECTION - The federal water purchase program authorized in this section is specific to this section and shall not be construed as a precedent in determining federal responsibilities toward wildlife areas.

(e) AUTHORIZATION - There are hereby authorized to be appropriated to carry out the provisions of this section $4,000,000 for each of the fiscal years 1991, 1992, 1993 and 1994.

TITLE IV - CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM

SEC. 401 TRANSFER OF FALLON NAVAL AIR STATION'S WATER RIGHTS.

(a) ALTERNATIVE AGRICULTURAL OUTLEASE PROGRAM - Not later than 1 year after the effective date of this Act, the Secretary of the Navy, in consultation with and with the assistance of the Secretary and the Tribe, shall develop and implement an alternative program for the lands owned by the United States within the Naval Air Station at Fallon, Nevada to replace the agricultural outlease program. The alternative program shall satisfy the Navy's dust abatement and fire safety requirements in the most water efficient manner. The water rights appurtenant to those lands which are not needed for dust abatement and fire safety requirements shall be transferred to the Pyramid Lake Indian Reservation for fishery purposes in compliance with requirements of the water laws of the State of Nevada.

(b) AUTHORIZATION OF APPROPRIATIONS - There are hereby authorized to be appropriated such funds as are necessary to implement the alternative program for the Naval Air Station as Fallon, Nevada described in subsection (a).

(c) The Secretary shall reimburse the Truckee-Carson Irrigation District for the full operation and maintenance charges associated with the water rights transferred pursuant to this section.

SEC. 402 LOWER TRUCKEE RIVER REHABILITATION PROJECT.

(a) IN GENERAL - The Secretary of the Army, in consultation with and with the assistance of the Tribe, the State of Nevada, and the Secretary, is authorized and directed to develop and implement a project for the rehabilitation of the lower Truckee River for the benefit of the Pyramid Lake Fishery which shall be designed to -

(1) restore riparian habitat and vegetative cover;

(2) stabilize the course of the lower Truckee River and minimize erosion damage;

(3) provide improved spawning habitat for the cui-ui to the

(3) provide improved spawning habitat for the cui-ui to the

extent deemed feasible; and

(4) provide improved spawning habitat for the Lahontan cutthroat trout to the extent deemed feasible.

(b) AUTHORIZATION OF APPROPRIATIONS - There are hereby authorized to be appropriated such funds as are necessary to implement the lower Truckee River rehabilitation project described in subsection (a).

SEC. 403 DELTA ACCESS FACILITIES.

(a) IN GENERAL - The Secretary of the Army, in consultation with and with the assistance of the Tribe and the Secretary is authorized and directed to develop facilities to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of lower Truckee River to obtain access to upstream spawning grounds.

(b) AUTHORIZATION OF APPROPRIATIONS - There are hereby authorized to be appropriated such funds as are necessary to implement the delta access facilities described in subsection (a).

SEC. 404 RECOVERY PLANS.

(A) IN GENERAL - Pursuant to section 4(f) of the Endangered Species Act (16 U.S.C. 1533(f)), the Secretary through the United States Fish and Wildlife Service shall revise and update plans for the recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed not later than 1 year after the effective date of this Act, unless any such plan has been revised and updated by the Secretary as required by the Endangered Species Act and which revision takes account of and is consistent with the provisions of this Act.

(B) CRITERIA FOR DEVELOPING PLANS - In developing the recovery plans pursuant to subsection (a), the Secretary shall -

(1) take account of, include, and make the plans subject to and consistent with the provisions of the interstate allocations described in Sec. 101, Sec. 102 and Sec. 103 of this Act, and the Operating Agreement described in Sec. 201 of this Act;

(2) take account of and include the transfer of the water rights of the Naval Air Station at Fallon, Nevada described in section 401(a) and the lower Truckee River Rehabilitation Project described in section 402(a);

(3) take account of and include the construction of any delta access facilities described in section 403;

(4) insure that the Fish and Wildlife Service shall consider water quality in the lower Truckee River in the development of a recovery program;

(5) establish a schedule which is designed to achieve implementation of a recovery plan for the cui-ui;

(6) establish a schedule which is designed to achieve implementation of a recovery plan for the Lahontan Cutthroat trout; and

(7) consider other actions consistent with the interstate allocations described in Sec. 101, Sec. 102 and Sec. 103 of this Act and the Operating Agreement described in Sec. 201 of this Act which may recover the cui-ui and Lahontan cutthroat trout.

TITLE V - PYRAMID LAKE DEVELOPMENT FUND

SEC. 501 ESTABLISHMENT OF FUND. There is hereby established with the Treasury of the United States the "Pyramid Lake Paiute Tribal Development Fund."

SEC. 502 AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated to the Pyramid Lake Paiute Tribal Development Fund ________________ together with interest accruing from the effective date of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on the outstanding federal obligations of comparable maturity. Following execution of the settlement agreements, judgments, and other appropriate final disposition specified in section 703, the Secretary of the Treasury shall allocate and make available such monies from the trust fund as are requested by the Tribe.

(b) Any monies not allocated to the Tribe and remaining in the fund authorized by this section shall be invested by the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 161a). Such interest shall be made available to the Tribe in the same manner as the monies identified in subsection 502(a).

TITLE VI - REHABILITATION AND BETTERMENT OF TRUCKEE RIVER DIVERSION AND TRANSPORTATION FACILITIES

SEC. 601 REHABILITATION AND BETTERMENT.

The Secretary, in consultation with the State of Nevada and with the approval of affected water rights owners, shall develop and implement projects for the rehabilitation and betterment of existing Truckee River diversion and transportation facilities, including, without limitation, Derby Dam and the Truckee Canal, to the extent that such improvement is necessary to ensure that implementation of the Operating Agreement does not impair or diminish any water rights on the Truckee River.

SEC. 602 AUTHORIZATION OF APPROPRIATION

There are hereby authorized to be appropriated such funds as are necessary to implement the rehabilitation and betterment of Truckee River diversion and transportation facilities described in Section 601.

TITLE VII - MISCELLANEOUS PROVISIONS

SEC. 701 CLAIMS SETTLEMENT.

(a) This Act shall not take effect until -

(1) Pyramid Lake Paiute Tribe v. California, Civ. S-81-78-RAR, United States District Court, Eastern District of California, is dismissed with prejudice;

(2) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed amended complaint, is dismissed with prejudice;

(3) Pyramid Lake Paiute Tribe v. Hodel, Civil S-87-1281-LKK, United States District Court, Eastern District of California is dismissed with prejudice.

(b) Any claim of the Tribe or the United States to alter the nature or use of existing water rights or to otherwise obtain additional water for the Tribe, the Pyramid Lake Indian Reservation, or for the Pyramid Fishery and any claim of the Tribe or the United States to alter the operation of the Truckee River or Truckee River Reservoirs in a manner inconsistent with the Operating Agreement are extinguished and barred.

SEC. 702 GENERAL PROVISIONS.

(a) In its capacity as trustee to the Tribe, the United States confirms and ratifies the waivers by the Tribe of any right to object to the use and implementation of water supply measures described in sections 3 and 21 of the Preliminary Settlement Agreement.

SEC. 703 EFFECTIVE DATE.

This Act shall not take effect until the Preliminary Settlement Agreement and the Operating Agreement described in section 201 become effective, the outstanding claims described in section 701(a) have been dismissed, and the Orr Ditch Court and the Truckee River General Electric Court have approved any provisions in the Preliminary Settlement Agreement and the Operating Agreement described in section 201 which affect the Orr Ditch Decree and the Truckee River General Electric Decree.

Senator **Bradley**. Thank you very much, Ms. Colling, for your testimony.

Mr. Kennedy, does, is anything in this bill inconsistent with California water law, or would it frustrate the administration of California water law?

Mr. **Kennedy**. Our attorneys believe there is nothing in the bill at the present time that would be inconsistent with California law, water law. We hear some suggestions of things that might go into it that give us some concern, but at the present time, no.

Senator **Bradley**. You mean you hear from the rumor mills?

Mr. **Kennedy**. Well, some of the discussions on the "details."

Senator **Bradley**. What details give you particular concern? Please share with us.

Mr. **Kennedy**. There was a suggestion that there be no further irrigation within the Truckee portion of California, and we feel that that is a matter that should be left to California as to what the beneficial use of that water would be.

Senator **Bradley**. Does this bill give you sufficient certainty, even though it is not an official ratification of the compact?

Mr. **Kennedy**. I think the bill together with the Operating Agreement that is provided for, yes, it does. And the bill, as you know, has dismissal of the litigation that we presently are involved in.

Senator **Bradley**. So it would be no less certain than passage of the compact?

Mr. **Kennedy**. I believe that is true, yes.

Senator **Bradley**. Ms. Colling, let me ask you, will you describe for us what you believe constitutes the local contribution to the costs associated with this bill? Local in terms of State, Truckee Meadows, others, whatever.

Ms. **Colling**. As I stated, the $8 million have been set aside for this process. At the same time the State Legislature and the Governor are promoting a bond issue that may bring forth more waters, more money to buy water for the wetlands areas.

Senator **Bradley**. So that is how Senator Reid got to $25 million? 16 plus the eight to 10?

Ms. **Colling**. That is correct.

Senator **Bradley**. Does the number $55 million that the bureau used, have you heard that number? The number I have heard was $40 million, not 55. They upped the ante a little bit.

Ms. **Colling**. I heard $50 million last. It is a moving target.

Senator **Bradley**. It probably changed on their way over. Would you object to having these contributions specifically stated in this bill?

Ms. **Colling**. I can't answer that. I am not sure how the Governor would feel about that.

Senator **Bradley**. Well, maybe you could have him inform us.

Ms. **Colling**. Certainly.

Senator **Bradley**. Mr. Kennedy, as someone who has had a lot of experience and thought a lot about these problems for a long time, and admittedly not wanting to meddle in another state, but having experience with a lot of the Bureau's projects, do you think that the Newlands project is one that should be guaranteed in perpetuity?

Mr. KENNEDY. I think your premise was correct. I don't want to touch that issue.

Senator BRADLEY. Maybe you could share with the Subcommittee your own sense of how things have changed in the last 10 or 15 years in terms of broader considerations being brought into water policy. We have always had on the books water supply as number one. We now have other factors to consider, like environmental quality, and fish and wildlife. As we have gotten more deeply and more advanced into water in the West, these issues in the last decade seem to have increased so much that the Bureau now states that it has had to grow into the "New" Bureau, and is considering these issues more prominently. Now, as a person who has dealt with these problems very directly day by day, how do you see the situation changing in the future?

Mr. KENNEDY. Probably the largest example in California is with the Federal Central Valley Project, which is administered by the Bureau of Reclamation. There we see significant changes being proposed, and I think even implemented with respect to the protection of fish and wildlife. There are discussions underway among both fish and wildlife interests and the agricultural interest about how to bring about even greater changes.

And I imagine in terms of perspective, the most encouraging thing that I see is a willingness to talk about this among all of the interests. I see very little remaining stonewalling of the issue, which we have had for a long time. I think it takes all of us who have been with us a while a period to adjust to the changing demands of society. And yet that is what we see here in California, as reflected by the elected officials. We really see some dramatic changes in the proposal.

Senator BRADLEY. What is the one bit of advice that you would give to participants in these issues?

Mr. KENNEDY. Well, I tend to think if you are not at the table you don't have a lot to complain about. Certainly this has not been our issue in California as to who was or wasn't at the table from our neighboring state, and I really don't know much about that. But within our state we have a very strong feeling that everybody is welcome. Our typical negotiating meetings are held in big rooms with lots of people involved. But whoever wasn't there is just, we tend to go ahead without them.

Senator BRADLEY. Thank you very much, Mr. Kennedy and Ms. Colling. I will look forward to hearing from the Governor on the contribution. I appreciate your testimony very much.

Mr. KENNEDY. Thank you, Mr. Chairman.

Senator BRADLEY. Our next panel consists of Virgil H. Wedge, Chairman, Coalition for a Negotiated Settlement; David Pumphrey, Chairman, Carson Water Subconservancy District; Forest Lawson, Councilman, Regional Water Planning and Advisory Board of Washoe County, Reno, Nevada. Now, there were three people called to the table, Virgil Wedge, David Pumphrey, and Forest Lawson. Do I take it that you are assisted each by your able attorneys or experts? Is that correct? Would you tell us who else is at the table?

STATEMENT OF VIRGIL H. WEDGE, CHAIRMAN, COALITION FOR A NEGOTIATED SETTLEMENT, ACCOMPANIED BY HAL PLUMMER, FORMER PRESIDENT, RENO-SPARKS CHAMBER OF COMMERCE; AND THOMAS R.C. WILSON, FORMER MEMBER, NEVADA STATE SENATE

Mr. WEDGE. Yes. Mr. Chairman, first, my name is Virgil H. Wedge and I am the Chairman of the Coalition formed in northern Nevada to support S. 1554 and a negotiated settlement. Along with me today is Mr. Hal Plummer, former President of the Greater Reno-Sparks Chamber of Commerce, and Mr. Thomas R. Wilson, former State Senator, distinguished State Senator from the State of Nevada, who is here representing EDAWN, or Economic Development Authority of Western Nevada.

Senator BRADLEY. Mr. Wedge, you may have the floor. We try to limit the prepared testimony to five minutes, if you could summarize. We are up against some time constraints. I would like to hear from all of you if I can prior to breaking for lunch, and we have a vote that is to begin in about 15 minutes. So if we could at least get through your statements in 20 minutes we could then come back after lunch and begin with questions with this group. That would be my hope.

Mr. WEDGE. Mr. Chairman, my statement is very short and is as follows. Again, my name is Virgil H. Wedge. I am a practicing attorney and a senior partner in one of the larger firms in northern Nevada. Over the years our firm has developed a specialty in water litigation and water matters. However, I am here today as a volunteer.

About 24 months ago many of us in northern Nevada began to feel the possibility of ending the legal wars on the Truckee River by negotiations with and among all of the competing interests for our limited water supplies. We began to meet in small groups which resulted in the formation of a broad based coalition of interest, all of whom felt that the enormous benefit will be realized by the enactment of Senate Bill 1554, followed by the Negotiated Settlement. I was elected Chairman of that coalition and am here to indicate their support as a group regarding S. 1554.

We have provided and filed with you a listing for you of the various individuals, organizations and entities which have joined the coalition. It is most unique to find labor unions, businesses, conservationists, development interests, wildlife and historical groups coming together with a common purpose. But the benefits to so many of those in this diverse group demanded the formation of this coalition for the support of S. 1554 and the Negotiated Settlement.

Our coalition has been meeting regularly with the Honorable United States Senator Harry M. Reid, the Honorable United States Senator Richard H. Bryan, and the Honorable Congresswoman Barbara Vucanovich to discuss the elements of the bill and to voice our support for it. We in turn have been meeting with the officials of the water companies, the Pyramid Lake Paiute Tribe, and representatives of the downstream users. It is our sincere desire to develop answers to questions and solve problems for all of those involved in the eventual settlement of our water resources, and the costly burdensome 80 years of litigation involving those water resources.

My job is to persuade you of the very broad based diverse interests who support this bill. I hope that I have been able to do that, and want you to know how much we appreciate the opportunity to testify on this very important piece of legislation. Again, I have caused a list of the members of the coalition to be prepared, which I have filed with you.

Since the time allotted is so very short, I make this brief statement to you and I would like, in an effort to save time, to turn the time over at this time to Mr. Hal Plummer, as I said, former President of the Greater Reno-Sparks Chamber of Commerce.

[The prepared statement of Mr. Wedge follows:]

STATEMENT OF VIRGIL H. WEDGE
COALITION FOR A NEGOTIATED SETTLEMENT

My name is Virgil H. Wedge. I am a practicing attorney, and the senior partner in one of the larger law firms in northern Nevada. Over the years our firm has developed a specialty in water litigation and water matters.

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I have caused a list of the members of our coalition to be prepared which I am filing with you at this time.

Since our allotted time is short my statement is brief so that you will have ample time to hear from Senator Wilson, who will be more specific as to reasons for our support.

COALITION FOR NEGOTIATED SETTLEMENT
IN SUPPORT OF S1554
COMMITTEE MEMBERS

Richard Arden
SEA Engineers/Planners
950 Industrial Way
Sparks, NV 89431

Steve Brown
Paine Webber
Stock Brokers
P.O. Box 3117
Reno, NV 89505

Kay Elverum
Nevada Associations of Realtors
P.O. Box 7338
Reno, NV 89510

George Foster
Plumbers & Fitters Union
P.O. Box 1037
Sparks, NV 89432

Curry Jameson
Fuetsch-Argeres & Assoc.
Realtors
222 California Ave.
Reno, NV 89509

Keith Lee
Walther, Key, Hoppin
Attorneys At Law
3500 Lakeside Ct.
Reno, NV 89502

Ken Lynn
Economic Development Authority
of Northern Nevada (EDAWN)
5190 Neil Road, Ste 111
Reno, NV 89502

Pam Miller
Assoc. Gen. Contractors
P.O. Box 40697
Reno, NV 89504

Patsy Redmond
Nevada Assoc. of Realtors
P.O. Box 7338
Reno, NV 89510

Bruce Bony
Greenhead Duck Club
3190 Elaine Way
Sparks, NV 89431

Tim Cashman
Cashman Equipment
P.O. Box 7520
Reno, NV 89510

Blackie Evans
AFL/CIO
223 So. Division, Ste 207
Carson City, NV 89701

Preston Hale
Real Estate
100 W. Liberty, Ste 900
Reno, NV 89501

Bob Jones
Northern Nevada Builders Assoc.
1400 Wedekind Road
Reno, NV 89512

Bernard Ludwig
Ducks Liminted
335 Queen Way
Sparks, NV 89431

John Madole
Assoc. Gen. Contractors
P.O. Box 40697
Reno, NV 89509

Tina Nappe
Job Opportunities In Nevada
560 Hill Street
Reno, NV 89520

Ralph Riggins
Duffet Financial & Const.
P.O. Box 70187
Reno, NV 89570

Chuck Bratton
Prudential - Bache Sec.
P.O. Box 2230
Reno, NV 89505

Paul Curtis
Lewis Homes Real Estate
P.O. Box 11367
Reno, NV 89510

Jim Finley
Nevada Assoc. of Realtors
101 Bartlett
Reno, NV 89512

Richard Heikka
Builders Association
of Northern Nevada
5650 Mt. Rose Hwy
Reno, NV 89511

Bill Kottinger
Paine Webber
Stock Brokers
P.O. Box 3117
Reno, NV 89505

Susan Lynn
Economic Development of
Northern Nevada (EDAWN)
1755 E. Plumb #170
Reno, NV 89502

Joe Mayer
Lucini & Associates
Real Estate
604 W. Moana Lane Ste A
Reno, NV 89509

Hal Plummer
Coldwell Banker
Real Estate Services
290 E. Moana Lane, Ste 1
Reno, NV 89502

Elmer Rusco
Building & Construction
3665 Pomo Drive
Reno, NV 89503

Dan Rusnack
Building & Construction
1150 Terminal Way
Reno, NV 89570

John Sande II
Vargas & Bartlett
Attorneys At Law
P.O. Box 281
Reno, NV 89504

Terry Shores
P.O. Box 21299
Reno, NV 89515

Blake Smith
Financial Dev. Corp.
708 N. Center St., Ste 300
Reno, NV 89501

Rose Strickland
Sierra Club
619 Robinson
Reno, NV 89502

Jane Sunday
Audubon Society
2615 Starks Way
Reno, NV 89503

Harry Swanson
Swanson & Capurro
1 E. First St.
Reno, NV 89501

Ken Taber
Nevada Waterfowl Association
3460 Yosemite
Reno, NV 89503

James Taranik
Desert Reasearch Inst.
P.O. Box 60220
Reno, NV 89506

Bill Wallace
New York Life Ins.
P.O. Box 1091
Reno, NV 89504

Virgil Wedge
Woodburn, Wedge, & Jeppson
Attorneys At Law
1 E. First St., Ste 100
Reno, NV 89501

Harvey Whittemore
Lionel, Sawyer & Collins
Attorneys At Law
P.O. Box 2610
Reno, NV 89505

Rob Winkel
Walther, Key Maupin Et. Al.
Attorneys AT Law
P.O. Box 30000
Reno, NV 89520

Fred Wright
Nevada Wildlife Federation
1122 Greenbrae Drive
Sparks, NV 89431

David Yardas
5565 College #304
Oakland, CA 94618

Ron Zurek
First Interstate Bank
P.O. Box 11007
Reno, NV 89520

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STATEMENT OF HAL PLUMMER, FORMER PRESIDENT, RENO-SPARKS CHAMBER OF COMMERCE

Mr. PLUMMER. Good morning, Mr. Chairman. My name is Hal Plummer. I am immediate past president of the Greater Reno-Sparks Chamber of Commerce and represent the interests of about 2,200 private sector members. I am here to tell you about us and why we support S. 1554.

We are a dynamic community that must grow to survive. We have a wonderful quality of life which we must preserve and improve where possible.

We are a university town, home to the University of Nevada at Reno. The Desert Research Institute, which is part of that institution, has acquired an international reputation in weather modification research and in air quality studies and plant genetics. Desert Research Institute is also involved through grants for ground and surface water hydrology studies and contaminant transport.

We are headquarters for 40 major geological and mining exploration companies who operate world wide. We have 28 million square feet of industrial space, now occupied as part of a planned economic diversification effort.

We are entertainment, family recreation, we are hiking and horseback riding, we are the symphony and opera, and we are very proud of our philharmonic orchestra. We are many wonderful things, but you will find we are not in possession of the best kinds of planning tools to preserve and make improvements.

This settlement is extremely important to our community. It not only provides an available drought supply which will support double the existing population, it provides certainty in the allocations between the states. It redirects our limited resources away from litigation and toward solutions. It provides protection for all Truckee River rights against future change, and allows local government the option to plan prudently.

Now, the solutions to these extremely important issues on the horizon, we have come to the Congress to ask you to assist our community in finalizing this critical settlement. Congressional approval is necessary for several reasons. We need congressional authority provided to the Secretary of the Interior to implement the innovative operation of Federal reservoirs for these purposes. We need this Congress to approve the interstate allocation of waters between the States of Nevada and California. The final approval of the allocations will allow us to confidently implement and rely on the water supplies negotiated for our area. Without the interstate allocations we could be merely realigning the parties to the lawsuits, and not ending them, as is intended here.

We further support provisions for funding the economic development of the Pyramid Lake Paiute Tribe. Our chamber has been actively involved in water matters and pursuit of a negotiated settlement for over 20 years. We have led and participated in voluntary conservation efforts. Our chamber was a major force in rewriting our city landscape ordinance to make it more conservation oriented.

We meet regularly with State and Federal environmental officials, with the Federal Water Master, and with water companies and local government representatives, the Tribe, with the Wetlands Coalition, and on and on. We believe that the negotiated settlement provisions as outlined in S. 1554 by Senator Harry Reid will be a quantum leap into an intelligent planning future for our valley, which we don't feel we have at this time.

The document before you is the result of an intense work by many individuals, companies and local governments over a long period of time. As a layman, I have been both amazed and confused by the number of political considerations involved in what we believe to be something absolutely essential to the survival of northern Nevada in the 21st century and beyond. At last we see the light.

Please remove the terrible burden of cost of litigation we have had to bear in the past 80 years. Please set in place the framework for progress and intelligent planning so badly needed at this time.

I appreciate the opportunity to make this brief statement before your committee. I would like to now turn our remaining time over to State Senator Wilson, who will summarize our position.

[The prepared statement of Mr. Plummer follows:]

STATEMENT BEFORE THE WATER AND POWER SUBCOMMITTEE OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Presented by: Hal Plummer
For The Greater Reno/Sparks Chamber of Commerce
Tuesday, February 6th, 1990

Good Morning!

My name is Hal Plummer. I am immediate past president of the Greater Reno/Sparks Chamber of Commerce and represent the interests of our 2,200 private sector members. I am here to tell you about us and why we support S.1554.

We are a dynamic community that must grow to survive. We have a wonderful quality of life which we must preserve and improve where possible.

We have a vibrant and intense diversity of ethnic, cultural, economic and educational backgrounds and have need for long range planning to develop the aspects that make our community unique and proud. We are still a frontier of the west, where opportunity exists for the bold and daring - for the risk taker and visionary.

We are a university town, home to the University of Nevada, Reno. The Desert Research Institute has acquired an international reputation in weather modification research and in air quality studies, and Plant Genetics.

Desert Research Institute is also involved through grants for ground and surface water hydrology studies and contaminant transport.

We are headquarters for 40 major geological and mining exploration companies who operate world wide. We have 28 million square feet of industrial space, now occupied as part of a planned economic diversification effort.

We are entertainment, family recreation, we are hiking and horseback riding, we are the symphony and opera and are proud of our Philharmonic Orchestra.

We are many wonderful things, but you will find we are not in possession of the best kinds of planning tools to preserve and make improvements.

Our residents do not understand the need to water lawns once or twice a week due to drought conditions when upstream capacity is available.

This settlement is extremely important to our community. It not only provides an available drought supply which will support double the existing population, it provides certainty in the allocations between the states, it redirects our limited resources away from litigation and toward solutions, it provides protection for all Truckee River rights against future change and allows local government the option to plan prudently.

Now with solutions to these extremely important issues on the horizon, we have come to the Congress to ask you to assist our community in finalizing this critical settlement. Congressional approval is necessary for several reasons. We need congressional authority provided to the Secretary of the Interior to implement the innovative operation of federal reservoirs for these purposes. We need this Congress to approve the interstate allocation of waters between the states of Nevada and California. The final approval of the allocations will allow us to confidently implement and rely on the water supplies negotiated for the area. Without the interstate allocations we could be merely realigning the parties to the lawsuits and not ending them as is intended here.

We further support the provisions for funding the economic development of the Pyramid Lake Paiute Tribe.

Our Chamber has been actively involved in waters matters and pursuit of a negotiated settlement for over 20 years.

We have led and participated in voluntary conservation efforts. Our Chamber was the major force in rewriting our city landscape ordinance to make it more conservation oriented.
We meet regularly with state and federal environmental officials, with the federal watermaster, with water companies, with local government representatives, the tribe, with the wetlands coalition, Ducks Unlimited, and other conservation minded organizations.

We believe that the negotiated settlement provisions as outlined in S.1554 by Senator Harry Reid will be a quantum leap into an intelligent planning future for our valley.

The document before you is the result of intense work by many individuals, companies and local governments over a long period of time. As a layman I have been both amazed and confused by the number of political considerations involved in what we believe to be something absolutely essential to the survival of Northern Nevada in the 21st century and beyond. At last we see light.

Please remove the terrible burden of cost of litigation we have had to bear the past 80 years. Please set in place the framework for progress and intelligent planning so badly needed at this time.

I appreciate the opportunity to make this brief statement before your committee.

Senator Bradley. Let me say your remaining time is fast disappearing. But, Senator, please, I know that you are capable of summarizing succinctly, so please avail yourself.

STATEMENT OF THOMAS R.C. WILSON, FORMER NEVADA STATE SENATOR

Senator Wilson. Thank you, Mr. Chairman. My name is Thomas Wilson. I live in Reno, Nevada. My prepared testimony has been given to the committee, I think by Senator Reid's office. I suppose the day would not be complete, and maybe a lot of this can be summarized by recalling something that Mark Twain said in the 19th century, unlike what has been said in this century. He published the territorial enterprise on the Comstock in those days, and on a trip to the east coast he expressed his thirst and declined a glass of water, saying in the west we drink whiskey and fight over the water. And that is still true today.

My purpose in being here, the comments made today and in our statement earlier, is to urge people to get back to the table and to get together. I served four terms in the Nevada Senate, in '71 my first session. We have a citizen legislation that meets every two years for a while. We voted to ratify the Bi-State compact between Nevada and California. It has been sitting in the Congress ever since, for 19 years, because of a lot of the same issues that we have been talking about today. And I am here on behalf of EDAWN, a group of Nevadans who want to see this chapter concluded, because of the importance of water and because of its importance to the State.

This bill is a vehicle to get people together to resolve many of the issues, and is supported by all the local governments in our part of the state, for obvious reasons. It will provide for pending settlement of claims and lawsuits, and as well for upstream storage. And it will do something else that is critical. Nevada, which has only a million people, resides next to the state which is about to be, I think, the fourth largest economy in the world, California. And they will finally conclude, by the effective ratification, if not of the Bi-State agreement, conclude the allocation of waters between those two states. That has been a source of substantial concern.

Essential to the requirements of settlement provided by the bill is the adoption of a water conservation plan which does provide for the retrofitting of water meters, which, while it has been a painful subject in Nevada, it is a necessary one, and it is time people addressed it. The bill will provide for upstream storage, for protection against drought, and frankly, the increase in yield of about 39,000 feet, acre-feet per year. The failure to achieve the benefits of this bill will have a direct affect upon the region's economic improvement and stability.

I want to point out, for Nevadans as well as this committee, that the window of opportunity is a limited one. The time available to settle this matter is probably limited to this year. One of the reasons is that one of the fellows who has shown a lot of leadership in these discussions is Joe Ely, the Chairman of the Paiute Tribal Council. His term will expire in December of this year as a matter of tribal law, and we will lose his leadership. And if it is not concluded by then and there are issues still outstanding, still to be discussed and negotiated, it isn't a matter of just continuing from there, it's probably going back to the beginning for a long and painful haul from where we are today.

Those with the responsibility to act here and Nevada have the opportunity to help achieve what has been under discussion for years. The alternative is that those who have that responsibility in Nevada, they may have the last and best clear chance to bring these objectives to resolution. And if they don't it may have been lost solely because of the ability of all of these people simply to work together. And that is a responsibility which I think is an important one.

This bill, for the metropolitan areas for whom I am speaking today, not the rural, represents a rather moderate rate of growth over the next forty years of about two percent a year. That is hardly a growth in the development boom. This is not an industry bill, it is a community bill. It is not pro-growth, it is pro-community, and it really is the basis, long term, if that region in western Nevada is ever going to achieve stability and reliability of water supply for moderate long-term economic planning and some degree of planning to preserve its quality of life.

Mr. Chairman, thanks for the opportunity for all of us to appear. We have come a long way. I don't mind telling you we appreciated your comment and the nature of your questions.

[The prepared statement of Senator Wilson follows:]

STATEMENT
THOMAS R. C. WILSON
ON S. 1554
BEFORE THE WATER AND POWER SUBCOMMITTEE OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

My name is Thomas R. C. Wilson. I live in Reno, Nevada. Parenthetically, my perspective * is that of a lawyer, a partner in a major Nevada law firm with offices in Reno and Las Vegas, and one who also served four terms in the Nevada State Senate from 1970-1986 - in the biannual sessions of a "citizen" legislature.

I was asked to appear and testify here today by the Economic Development Authority of Western Nevada, a coalition of citizens and business people interested in economic development and diversification in a manner consistent with the reasons they live in Western Nevada - the quality of life there.

Water, of course, has always been recognized as the region's most severe limit to a stable, moderate and well-planned rate of growth for the economic health of Reno, Sparks and Washoe County.

In 1971, during my first Session in the Nevada State Senate, I voted for and the Legislature passed the Bi-State Compact Agreement between Nevada and California to allocate between the two states the waters of the Truckee, Carson and Walker River Systems. The matter of federal ratification of the Bi-State Compact Agreement has been pending ever since, for the past 19

* See attached personal notes.

years. It has not been ratified because many of the same conflicts, disagreements, claims and litigation existing in 1971 still exist today. S. 1554, introduced by Sen. Harry Reid, would settle these conflicts and conclude the provisions of the Bi-State Compact Agreement.

Necessary then and now is the vehicle of this Bill to bring all the interested parties together in a comprehensive water acquisition, management and treatment plan for Reno, Sparks and Washoe County.

S.1554 is supported by the Regional Water Planning and Advisory Board, which is composed of members of the Reno and Sparks City Councils and the Washoe County Commission. It will provide for settlement of the pending claims and lawsuits and the respective rights of up-stream and down-stream users of Carson, Walker and Truckee River water, including the Piaute Tribe at Pyramid Lake, as well as for up-stream storage for periods of drought. The Bill will also ratify the allocation of waters between Nevada and California.

Essential to the requirements of settlement provided by the Bill is the adoption of a water conservation plan, which includes the retrofitting of water meters for the conservation of its supply and the measurement of its use. The Bill and its required settlement agreements are necessary to: (1) the protection of Nevada's share of Sierra Nevada waters against California claims, and (2) the use of up-stream storage for drought and its increased yield of 39,000 acre feet per year. The failure to achieve these benefits will have a direct effect upon the region's economic improvement and stability.

The window of opportunity is limited. The time available to settle the claims and litigation, as a practical matter, is only until December of 1990, less than one year. December 1990 is the end of the term of the Chairman of the Piaute Tribal Counsel, Joe Ely, who must retire. If settlement is not achieved by then, the slow and halting process of review and negotiation will not continue, but at best will start back at the beginning. Great progress will be lost.

The brief window still remaining to conclude these matters presents both great opportunity and serious risk.

Those with the responsibility to act, here and in Nevada, have the opportunity to help achieve what has been under discussion for years, the permanent allocation of waters between Nevada and California and between users in Nevada, increased up-stream storage for drought, and the additional yield water for municipal and industrial uses.

The alternative is that those who now have that responsibility will be remembered as those in office in 1989 - 1990 who had the best and last clear chance to obtain agreement and additional water which the region desperately needs, but who lost it solely because of their inability to work together.

This Bill, S. 1554, provides a framework for settlement, agreement and conclusion of the issues, conflicts, and controversy which have so long impeded and delayed the allocation of waters of the Truckee, Carson and Walker River systems between Nevada and California, and within Nevada between the uses of the Tribe, for wetlands and environmental preservation, agriculture, municipal, and industrial uses, and storage for drought protection.

With respect to the metropolitan areas within Washoe County, the provisions of the Bill and its necessary settlements will provide for:

(1) A very moderate rate of growth of approximately two percent (2%) per year over the next forty (40) years; hardly a growth and development boom,

(2) Desperately needed protection against drought, and

(3) The necessary stability and flexibility for adequate economic planning.

Without the Bill and its required settlements, the region will face economic stagnation and periodic drought.

This Bill will enrich the affected communities within Western Nevada by contributing to their quality of life and their ability to diversify their economy. It is not "pro-growth" or "pro-gaming" or "pro-industry". The Bill is "pro-community". Its means and objectives are moderate, balanced, reasoned, equitable, and essential to the long term welfare of the region.

Thank you.

A:\testimony.TM2

THOMAS R. C. WILSON
personal notes

SCHOOLS:		Reno public Stanford University Georgetown University Law Center
MEMBER NEVADA STATE SENATE:		4 terms 1970 - 1986 President Pro Tempore - 1985-86 Chairman, Judiciary Committee Member: Committees on Finance, Government Affairs, Environment and Natural Resources
PROFESSIONAL:		Attorney Fellow of the American College of Trial Lawyers.
MEMBER:		San Francisco Regional Panel, the President's Commission on White House Fellowships, 1982-85.
MISCELLANEOUS	*	Served as chairman of a State Senate committee which developed much of Nevada's code for environmental protection;
	*	Led Nevada's bi-state negotiations in 1979-80 with California to strengthen by comprehensive amendment the Bi-State Compact Agreement for the Tahoe Regional Planning Agency, as approved by the Nevada and California Legislatures, the U.S. Congress and the President.
	*	Led Nevada's opposition in 1985-88 to federal legislation to transfer the Humboldt and Toiyabe National Forests in Nevada to the U.S. Bureau of Land Management, and to obtain federal legislation to enlarge those national forests, which became law in October of 1988.

Senator BRADLEY. Thank you very much, Senator.

Mr. Pumphrey.

STATEMENT OF DAVID PUMPHREY, CHAIRMAN, CARSON WATER SUBCONSERVANCY DISTRICT

Mr. PUMPHREY. Thank you, Mr. Chairman, for the opportunity to testify on S. 1554 on behalf of the Carson Water Subconservancy District. I have with me our program manager and engineer, Ira Rackley, and our legal counsel, Don Springmeyer. And although I will be presented our testimony, these gentlemen are available to answer any questions.

We only have two comments regarding S. 1554. One is with regards to section 101, sub 2, regarding the Alpine County, California right to compensation for discontinuance. We have reached an agreement with all of the players and affected parties on the upper Carson River in California and Nevada. The specific language with regard to what has been agreed upon is in our written testimony, and I won't repeat that at this point in time. We do support those amendments.

Our second comment is with regard to section 101, sub d and e. Again, our written testimony contains our specific comments, but in general what those comments entail are the removal of any implication or inference that the tribe has a say so in decisions affecting the upper Carson River. It is our understanding also that those changes have been agreed to by all parties.

Assuming that those proposed amendments are noncontroversial and will be adopted, as we have been advised that they will be, we are pleased to say that we whole heartedly support S. 1554. If there are any questions we would be happy to answer them. Thank you.

[The prepared statement of Mr. Pumphrey follows:]

CARSON WATER SUBCONSERVANCY DISTRICT
P.O. BOX 2672 • CARSON CITY, NEVADA 89702

January 24, 1990

Senator Bill Bradley
U. S. Senate
Washington, D.C. 20510

Subject: Senate bill 1554
"Truckee-Carson-Pyramid Lake Water Rights Settlement Act"

Dear Senator Bradley:

Please accept and enter this submittal as testimony to introduce the Carson Water Subconservancy District, explain some of our relevant history, to demonstrate the reasons for our interest in S. 1554, and to offer our recommendations for amendments to the bill. Our overall objective is to show strong support for Senate bill 1554, with some constructive criticism on provisions which affect the present operations of the upper Carson River and the Carson River Management Program, a resource management program designed to address and plan for the future needs of the upper Carson River.

The Carson Water Subconservancy District supports the subject legislation. It is a very important act which will solidify the water operations of the Carson River that have been established through historical use and as stipulated in the Alpine Decree. In general, Our District cannot support any provisions which would alter the Alpine Decree or introduce any party or agency into the operations of the Upper Carson River that are not contained in the Alpine Decree.

A. HISTORY

The Carson Water Subconservancy District was formed in 1959 as a quasi-governmental entity pursuant to Nevada Revised Statutes Chapter 541. The original purpose of the District was to serve as the agency to develop the local contracts for support of a U.S. Bureau of Reclamation project which included the construction of upstream storage facilities on the Carson River. This project was referred to at the time as the Watasheamu Dam Division of the Washoe Project, a project of the U.S. Bureau of Reclamation. The Washoe Project was originally contemplated to involve several dams and diversion structures on the Truckee River and Carson River systems. The Washoe Project was an extension of the first federal water project - the Newlands Project- which created the Lahontan dam and reservoir on the lower Carson River. This reservoir gave birth to the entire farming area around Fallon, Nevada with the resulting irrigation water.

For a variety of reasons, the Watasheamu Dam never advanced beyond the preliminary engineering phase with the Bureau of Reclamation. Foremost among those reasons was the Bureau's conclusion in the early 1980's, after its most recent updated studies, that the cost/benefit ratio for the 150,000 acre foot storage facility was not favorable. Local governments continued, however, to have concern over both flood control and long range needs for municipal and industrial water. During this interim period, the Carson Water Subconservancy District was relatively inactive.

In 1985 the Nevada legislature formed an interim legislative commission to study the water issues of the upper Carson River system. That commission recommended, and the full Nevada legislature voted in 1987, to charge the District with developing a resource management program for the upper Carson River system which was to include upstream storage, a long range program for developing the surface and ground water resources of the region to meet the projected demands of the future and producing a plan to manage the area's surface and ground water resources to assure compliance with the federal Safe Drinking Water Act. The District fulfilled this charge by completing and adopting the Carson River Management Program in 1988. The Program, which included a recommended restructuring of the District, was presented to the 1989 Nevada legislature. As a result of many public hearings, proposals were developed for implementing the Carson River Management Program and transforming the District into a tri-county water authority. These proposals were then presented to the 1989 Nevada Legislature.

The result of the 1989 Nevada legislature's action was to establish a tri-county water authority which included restructuring the membership of the District's board so that representatives of the County Commissions of the three counties in the drainage basin and representatives of agricultural users on the river system constitute the Board of Directors. The effect of this restructuring was to convert the board from purely agricultural representation to a super majority of county governmental representatives. The legislature charged the District with studying and evaluating the feasibility of a "down-sized" upstream storage facility on the Carson River to provide storage for future municipal and industrial needs as well as some flood control protection. Also, the Nevada Legislature charged the District with the necessary powers and duties to implement and manage the Carson River Management Program.

The jurisdictional area that this District represents includes the Carson River Basin above Lake Lahontan to the Nevada-California State Line. This area involves portions of Douglas County, Carson City, and Lyon County. The District boundaries are illustrated on the attached map of the general area. The area is one of the fastest growing areas in the Western United States.

The District has completed the first phase of investigating an upstream storage site and will soon proceed with the necessary permitting and environmental assessments to complete the first preliminary drilling and detailed geologic investigations for a potential reservoir site on the upper East Fork of the Carson River in Nevada known as the Bodie site. A dam at the Bodie site would create a reservoir pool of 50,000 acre-feet (about one-third the size of the originally contemplated Watasheamu Dam) which will be wholly within the State of Nevada and will not impact any portions of the East Fork of the Carson River in the State of California.

B. REQUESTED AMENDMENTS

The District has reviewed Senate Bill 1554 as it pertains to the Carson River System and its inter-relationships with the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act". The District is very supportive of reaching full agreement on the allocation of waters on these river systems in a manner which will ratify the Alpine Decree and protect the sovereign rights of the State of Nevada. The water issues on the Carson River were finally resolved in the early 1980's after 50 years of litigation which resulted in the "Alpine Decree". The Alpine Decree has been upheld in the Ninth Circuit Court of Appeals and the U.S. Supreme Court refused to hear the appeal from the Ninth Circuit Court ruling.

Senate Bill 1554, as introduced, contains several provisions which the Carson Water Subconservancy District wishes to amend due to the impact these provisions have on the Alpine Decree and the historical water rights of the Upper Carson River. It is our opinion that these issues can be adequately addressed to protect the interests of the states of California and Nevada, the Pyramid Tribe and the interests of the Carson Water Subconservancy District.

Our District representatives have met with concerned parties in California and agreed to the following proposed language that will satisfy the irrigation interests of both states. The following paragraphs have been reviewed by the California-Nevada negotiation committee and, it is our understanding, are acceptable to this bi-state committee. Therefore, we request that Section 101.(2) be modified as follows:

> (2) RIGHT TO COMPENSATION FOR DISCONTINUANCE. ----- If all or any portion of the effluent imported from the Lake Tahoe Basin into the watershed of the Carson River in California on or after the effective date of this Act is discontinued by reason of the disposal of such effluent, including underground disposal, within the Truckee River Basin or the Lake Tahoe Basin, the allocation to California of the waters of the West Fork of the Carson River and its tributaries for use in California shall be augmented by an amount of water for storage, provided that such storage:
>
> (1) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River as defined in the Alpine Decree, and

(2) shall not be harmful to fish and wildlife to a greater degree than existing reservoirs, and

(3) shall not exceed 2,000 acre-feet per year, and

(4) as is permitted under this provision to be diverted to storage in a given year shall be available for irrigation use in that or subsequent years.

Such storage will compensate California for any such discontinuance: provided that such augmentation shall be for use only on lands to which rights decreed by the Alpine Decree are appurtenant. *Provided further* that nothing in this Act shall be construed to prohibit the continued use of all or any portion of such effluent on lands within California. *Provided further* that any decreed lands in California or Nevada which are using or may use wastewater effluent from within the Carson River Basin or imported from the Lake Tahoe Basin shall not lose their decreed surface rights by reason of the use of wastewater effluent for irrigation of such decreed lands.

It is also our understanding that other interests on the systems may take exception to the above language which addresses agreements reached during the interstate negotiations conducted prior to the initiative undertaken by Senator Reid. It is not our intent to ignore those competing interests but only to protect the present and future resource requirements of our region. Therefore, we are submitting an alternate provision which we can support if the above language becomes unacceptable.

Our alternative language is based on the assumption that this paragraph is intended to allow the effluent from the Lake Tahoe Basin to be used for land application purposes such as irrigation, groundwater recharge, etc. Furthermore, if this land use involves decreed acreage entitled to water rights under the Alpine Decree, the water right owner does not want to jeopardize his rights through accepting the use of this effluent. If this is a correct assumption, we agree with the intent. However, we interpret the actual language of this paragraph to say that the California water would be augmented by a like amount even if the original decreed waters were left intact. If this is true, then the California interests would be entitled to twice the amount of water provided through the Alpine Decree for the applicable decreed acreage.

It is this doubling of water that other river users may take exception to. If this becomes a point of difference in future negotiations, our District is submitting the following alternate language. We suggest this alternate language, if used, be inserted as a new paragraph under Section 101 and delete Section 101.(2) as it is now presented.

( ) Supplemental Use of Wastewater

> Any decreed land which is using or may use wastewater effluent from within the Carson River Basin or imported from the Lake Tahoe Basin shall not lose its decreed surface water rights by reason of the use of wastewater effluent for irrigation of such decreed lands.

In paragraphs 101(d) and 101(e) we request that the first sentence of each paragraph which reads "The States of California and Nevada, The Tribe, and The Secretary may negotiate an agreement permitting the voluntary transfer of water or water rights for use within the Carson River Basin." be deleted. We are strongly opposed to and will not support any language which allows parties without water rights or position in the upper Carson River system to make agreements on water transfer or water rights. The Alpine Decree specifically holds that the river system is fully allocated and that all water use is subject to the federal court order. The District's Resource Management Program recognizes the decreed uses and limitations and will operate within the confines of the Alpine Decree. Any major project which the District may undertake will be subject to applicable federal and state environmental laws, operational constraints of the Alpine Decree, and Nevada water law. It is not practical nor warranted that projects on the upper Carson River should be subjected to agreements with the State of California when the projects do not impact California lands or waters. It is not necessary for agreements to be negotiated with the Tribe or the Secretary of the Interior as these entities have adequate input through the environmental processes, Nevada State Law, and the Federal Water Master.

We request that any transfer of Carson River waters be subject to the provisions of the Alpine Decree. Since the Alpine Decree is in place and operating in concert with the laws of the state of Nevada, we recommend deletion of Section 101, paragraph (d) "Voluntary Interstate Transfers" in its entirety. The Alpine Decree sets forth specific procedures on transferring water across river segment boundaries both intrastate and interstate. It is redundant to include such in this Act and might be taken as evidence of intent to override the Alpine Decree.

Further, we recommend that Section 101, paragraph (e) "Municipal and Industrial water uses in Nevada," be moved to Section 602 "General Provisions", as paragraph (g), and modified to read as follows:

(g) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA - Nothing in this Act precludes the State of Nevada, agencies of the state, and private entities and individuals from constructing storage facilities within the Carson River Basin provided that such storage facilities shall not result in the inundation of any portion of the East Fork of the Carson River in California. Furthermore, this Act:

(1) recognizes and confirms the right to change the beneficial use of water from irrigation to storage for municipal and industrial uses: Provided, That such changes are in accordance with the Alpine Decree;

(2) permits water stored under this provision to be diverted to storage in a given year and held in storage for use in that or subsequent years; and

(3) confirms the historic practice for operation of reservoirs identified on pages 145 and 146 of the Alpine Decree to store, release and use quantities of water determined by the decreed capacity of the reservoirs and the yield of the tributary basin.

It is our opinion that this section as proposed recognizes the State of California legislation which effectively precludes any inundation of the California portion of the East Fork of the Carson River. The District, in an open and cooperative manner, coordinated our planning efforts with the State of California and moved our dam site downstream to the Bodie site to avoid any impact to the California segment of the East Fork of the Carson River. Our proposed project is wholly within the State of Nevada and would operate within the criteria set forth by the Alpine Decree.

The Carson Water Subconservancy District requests that the above changes be incorporated in Senate Bill 1554, the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act".

Sincerely,

CARSON WATER SUBCONSERVANCY DISTRICT

David Pumphrey
Chairman

DP:ph

cc: Roland Westergard, Director
Dept. of Conservation & Natural Resources
Senator Harry Reid
Senator Richard Bryan

February 1, 1990

ADDENDUM TO TESTIMONY OF CARSON WATER SUBCONSERVANCY DISTRICT PREPARED ON JANUARY 24, 1990 AND SUBMITTED TO THE SUBCOMMITTEE ON WATER AND POWER OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE FOR HEARING ON FEBRUARY 6, 1990, 9:30 A.M. IN ROOM SD-366 OF THE DIRKSEN SENATE OFFICE BUILDING, WASHINGTON, D.C.

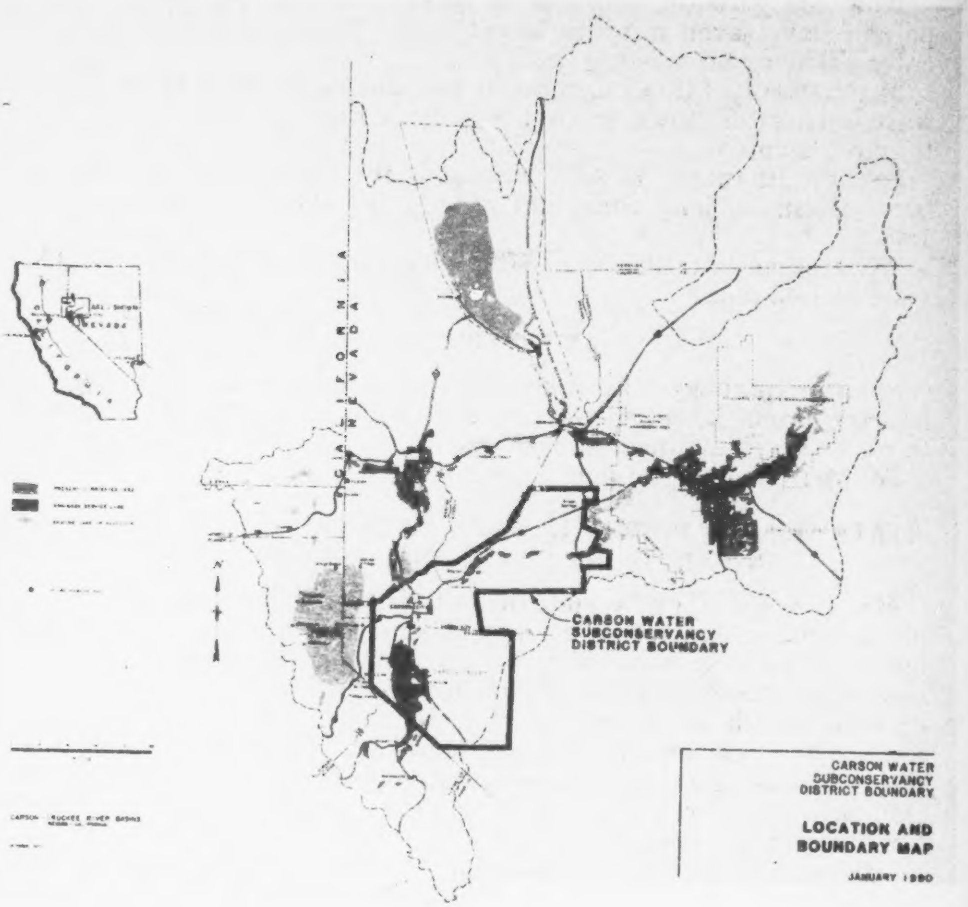
The following paragraph is added to the Carson Water Subconservancy District's requested amendments to Senate Bill 1554, "TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT", Section 101(2)----RIGHT TO COMPENSATION FOR DISCONTINUANCE, as subparagraph (5):

> (5) storage provided under this provision shall not be diverted during the irrigation season as defined by the Alpine Decree.

The above paragraph is hereby added to page 4 of the written testimony submitted to the Subcommittee on Water and Power by the Carson Water Subconservancy District.

CARSON WATER SUBCONSERVANCY DISTRICT

David Pumphrey
Chairman


CALIFORNIA
NEVADA
CARSON WATER
SUBCONSERVANCY
DISTRICT BOUNDARY
CARSON - TRUCKEE RIVER BASINS

CARSON WATER
SUBCONSERVANCY
DISTRICT BOUNDARY

LOCATION AND
BOUNDARY MAP

JANUARY 1990

Senator **Bradley**. Thank you, Mr. Pumphrey.

Now, Mr. Lawson, continue to speak until five buzzers, at which point I have seven minutes to get to the floor and I will automatically adjourn the meeting until 1:45.

Mr. **Lawson**. Mr. Chairman, if you desire, I would be willing to wait until after lunch so that you don't have to crash down there to make a vote.

Senator **Bradley**. You know, that is the mark of a man who has been around a long time. Let us adjourn the meeting then until 1:45.

[Whereupon, at 12:02 p.m., the subcommittee recessed, to reconvene at 1:45 p.m.]

AFTERNOON SESSION

Senator **Bradley**. The subcommittee will come to order. We were hearing Panel III when we recessed. Mr. Forest Lawson was about to make his five-minute presentation.

So, Mr. Lawson, the floor is yours.

STATEMENT OF FOREST LAWSON, REGIONAL WATER PLANNING AND ADVISORY BOARD OF WASHOE COUNTY

Mr. **Lawson**. Thank you, Mr. Chairman. I have decided to cut my testimony down. You already have a copy and I will try to summarize it for you. First of all, my name is Forest Lawson. I do represent the Regional Water Planning and Advisory Board of Washoe County, which is present at this hearing to represent the Reno-Sparks area of western Nevada. Also here from the board is Mr. Steven Mack, our Executive Director, and our legal counsel, Mr. Don Springmeyer. They will be able to answer any technical questions you may have.

I thank you for the invitation to speak on behalf of Senate Bill 1554. We call it the Negotiated Settlement in western Nevada. So when I refer to the Negotiated Settlement in my testimony, I am speaking of the settlement that would be allowed by favorable congressional action on this bill.

The Regional Water Board was created by the Nevada Legislature to develop a regional water resource plan for southern Washoe County, and to investigate enhancement of regional water supplies, and to advise state and local governments on water resource issues. Now, there are elected representatives on this board, three from Sparks, I mean three from Reno, three from Washoe County, two from Sparks, and one at large technical member. So it gives us broad regional representation.

The board is currently working on regional water resources plans which will enable, once the Negotiated Settlement is accomplished, several water supply alternatives, and we are the local area lead agency for developing the water conservation measures required by the Negotiated Settlement.

To summarize again, we support passage of S. 1554. We have passed a resolution to that effect. We have also submitted in our testimony resolutions of support from the Reno and Sparks city councils. And we are doing this work and offering our support because of a belief that through the many agreements and this legislation known as the Negotiated Settlement, we have a window of opportunity to benefit our municipal water supply and the region in general.

Many interested parties are working together and negotiating, each giving something up and each getting something in return. And, as you know, none of us can achieve our objectives by ourselves, or even bilaterally with otherinterested parties. All must be involved. If we let this opportunity pass by, who-knows when, if ever, we will get this far again. For any of these efforts to mean something we need passage of S. 1554.

Finally, I would like to state that we hope S. 1554 moves along speedily through the legislative process. We are doing our part locally and expect to have the needed agreement ready soon. Other parties are coming to agreement on other aspects of the Negotiated Settlement. Favorable action on this bill will provide national support for our efforts and get us that much closer to the successful conclusion of the negotiations.

Again, for our local agreements to mean anything, we need passage of 1554. I want to thank you for the opportunity to come, and we are available for any questions you may have.

[The prepared statement of Mr. Lawson follows:]

RENO-SPARKS
REGIONAL WATER PLANNING AND ADVISORY BOARD
AND WASHOE COUNTY

Testimony on S.1554
The Truckee-Carson-Pyramid Lake Water Rights Settlement Act
For the Subcommittee on Water and Power

My name is Forrest Lawson and I am representing the Regional Water Planning and Advisory Board of Washoe County (Regional Water Board) which is present at this hearing to represent the Reno-Sparks area of Western Nevada. Also here from the Board is Stephen Mack, our Executive Director, who is available to answer any technical questions you may have. Thank you for the invitation to testify on S.1554, The Truckee-Carson-Pyramid Lake Water Rights Settlement Act. This act is the U.S. Congress component of the process we call the Negotiated Settlement in Western Nevada. When I refer to the Negotiated Settlement in my testimony, I am speaking of the settlement that will be allowed by favorable Congressional action on S.1554.

The Regional Water Board was created by the Nevada Legislature to develop a regional water resources plan for the southern Washoe County region, to investigate enhancement of regional water supplies, and to advise state and local governments on water resources issues. Elected representatives of the three local governments - Reno, Sparks, and Washoe County - plus one at-large technical member comprise the Board membership giving it a broad regional representation. The Board is currently working on a regional water resources plan which is considering the water supply enabled by the Negotiated Settlement as one of several water supply alternatives and is the local area lead agency for developing the water conservation measures required by the Negotiated Settlement.

As you have heard in more detail from others, the Truckee and Carson River Basins are a microcosm of the water problems of the West. We have interstate allocations, interbasin transfers, irrigated agriculture, growing municipal uses, Indian water rights, important wetlands issues, instream flows, lake levels at both ends of the Truckee River and midstream for the Carson River, endangered fish species, hydropower, and more. The interests of the Regional Water Board in resolving these issues have been principally focused on enhancing our future municipal water supply and ensuring additional upstream storage for additional drought water supply, but we are also very interested in the significant regional benefits that would accrue to the Truckee and Carson River Basins.

The Regional Water Board is here today to support passage of S.1554. We have been following and participating in the proceedings of the Negotiated Settlement for some time. In the Spring of 1988 we attended the first open meeting on the negotiations. Since then we have been

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offering our comments on the progress and participating to the extent possible. In March 1989 the Regional Water Board passed Resolution 89-3 which supported satisfactory conclusion of the Truckee River Negotiations. In that resolution the Board offered to take the lead in developing the local conservation plan required by the negotiations. At our January 17, 1990, meeting the Board unanimously passed a motion supporting passage of S.1554.

We are doing this work and offering our support because of our belief that, through the many agreements and this legislation known as the Negotiated Settlement, we have a window of opportunity to benefit our municipal water supply and the region in general. Many interested parties are working together and negotiating - each giving something up and each getting something in return. None of us can achieve our objectives by ourselves or even bilaterally with other interested parties. All must be involved. If we let this opportunity pass by, who knows when, if ever, we might get this far again? For any of these efforts to mean something we need passage of S.1554.

Because of our principal interest in municipal water supply for the Reno-Sparks area, we have reviewed Title II - Truckee River Water Supply Management most closely. That part of the bill appropriately acts as a shell for the successful conclusion of local agreements that must be negotiated and implemented for the Negotiated Settlement to become a reality. We support the present language in the Preliminary Settlement Agreement in Title II guaranteeing 39,500 acre-feet of upstream storage for drought and reserve the right at the local level to continue negotiating the conservation program. Our support is contingent on the language in Title VI, Section 603 continuing to include Reno and Sparks and adding Washoe County for entering into an agreement certifying that all necessary preconditions for the settlement have been satisfied and provide for the implementation of the settlement.

In conclusion, we hope S.1554 moves speedily through the legislative process. We are doing our part locally and expect to have the needed agreements ready soon. Other parties are coming to agreement on other aspects of the Negotiated Settlement. Favorable action on this bill will provide national support for our efforts and get us that much closer to the successful conclusion of the negotiations. Again, for our local agreements to mean anything, we need passage of S.1554.

Thank you for the opportunity to comment. We are available for any questions you might have.

RESOLUTION NO. 4589

INTRODUCED BY Smith

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RENO SUPPORTING UNITED STATES SENATE BILL NO. 1554

WHEREAS, U.S. Senator Harry Reid has introduced Senate Bill No. 1554, a bill to ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, the states of California and Nevada, and other parties regarding waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes;

WHEREAS, the cities of Reno and Sparks have experienced substantial population increases during the 1980's and anticipate further such increases in the 1990's and beyond; and

WHEREAS, the cities of Reno and Sparks have periodically experienced periods of severe drought, and are currently in the third year of the latest drought; and

WHEREAS, the cities of Reno and Sparks reasonably foresee a continuing need for a consistent, reliable and expanding water supply for municipal and industrial uses well into the 21st century; and

WHEREAS, the May 23, 1989 preliminary settlement agreement between the Pyramid Lake Paiute Tribe and Sierra Pacific Power Company appears to offer a workable method for ensuring an adequate water supply for present and future citizens of and visitors to the Reno-Sparks area, consistent with the economic and fishery development goals of the Pyramid Lake Paiute Tribe; and

WHEREAS, the final resolution of the multitude of litigation involving the Truckee River by reasonable negotiated settlement is in the public interest;

NOW, THEREFORE, BE IT RESOLVED that the City of Reno, acting by and through its City Council, does hereby express its support for the general principles, objectives and goals of United States Senate Bill No. 1554, and hereby urges the Congress of the United States to act swiftly and favorably upon said bill.

PASSED AND ADOPTED this 23rd day of January, 1990 by the following vote:

AYES: Smith, Allen, Bryan, Wishart

NAYS: Lehners, Sferrazza

ABSENT: Nunez ABSTAIN: None

Approved this 23rd day of January, 1990.

PETER J. SFERRAZZA, Mayor

ATTEST:

DONALD J. COOK, City Clerk and
Clerk of the Reno City Council

OFFICE OF THE CITY CLERK
CITY OF SPARKS
431 PRATER WAY
P.O. BOX 857
SPARKS, NEVADA 89432-0857
HONE (702) 353-2350

LETTER OF TRANSMITTAL

DATE: January 31, 1990

RE: Resolution Supporting Truckee-Carson-Pyramid Lake Water Settlement Act

TO: United States Senator Harry Reid
Reno Senate Office
300 Booth Street
Suite 4024
Reno, Nevada 89509

WE ARE SENDING YOU THE FOLLOWING ITEM (S):

QTY.	CITY FILE NO.	DESCRIPTION:
1	Res. No. 2067	Fully executed Copy of Resolution supporting Truckee-Carson-Pyramid Lake Water Settlement Act, as outlined in Senate Bill No. S.1554 of the 101st Congress, 1st Session.

COUNCIL APPROVAL DATE: January 22, 1990

REMARKS: Faxing to Senator Reid's Reno Office on 1/31/90.

Jane L. Stewart
City Clerk and
Clerk of the City Council

JLS:bc

Enclosure (1)

cc: Mayor's Office
Agenda Item 6.4
File - Res. No. 2067

RESOLUTION NO. 2067 INTRODUCED BY COUNCIL

A RESOLUTION SUPPORTING SENATE BILL NO. 1554.

WHEREAS, U.S. Senator Harry Reid has introduced S.1554, a bill to ratify and implement water settlements involving the Pyramid Lake Pauite Tribe, the States of California and Nevada, and other parties regarding waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes; and

WHEREAS, the Cities of Reno and Sparks have experienced substantial population increases during the 1980s and anticipate further such increases in the 1990s and beyond; and

WHEREAS, the Cities of Reno and Sparks have periodically experienced periods of severe drought, and are currently in the third year of the latest drought; and

WHEREAS, the May 23, 1989, preliminary settlement agreement between the Pyramid Lake Pauite Tribe and Sierra Pacific Power Company appears to offer a workable method for ensuring an adequate water supply for present and future citizens of and visitors to the Reno-Sparks area, consistent with the economic and fishery development goals of the Pyramid Lake Pauite Tribe; and

WHEREAS, the final resolution of the multitude of litigation involving the Truckee River by reasonable negotiated settlement is in the public interest.

NOW, THEREFORE, the City Council of the City of Sparks does hereby express its support for the general principles, objectives and goals of S.1554 and urges the Congress of the United States to act swiftly and favorably upon said bill.

PASSED AND ADOPTED this 22nd day of January, 1990, by the following vote of the City Council:

AYES: ALEXANDER, WEDOW, ARMSTRONG, LAWSON, SHAW

NAYS: NONE

ABSENT: NONE

APPROVED this 22nd day of January, 1990,

by:

James L Spoo

JAMES L. SPOO, Mayor

ATTEST:

Approved as to Form:

Jane L Stewart

JANE L. STEWART, City Clerk

Steven P. Elliott, City Attorney

Senator **Bradley**. Thank you very much, Mr. Lawson. Mr. Wedge, I wonder, the last couple of years there have been some problems with drought. Is that right?

Mr. **Wedge**. Yes, we have had two years, and going into the third drought year.

Senator **Bradley**. For the benefit of the subcommittee, how would you convey the Truckee Meadows water supply situation.

Mr. **Wedge**. Well, I think that it is marginal at this time in that all of our reservoirs out there are literally empty, that we have very little storage water available to solve our needs during this coming irrigation season, and we just have a real shortage of water at this time to meet all of our needs, municipal, our industrial, our irrigation needs, as a result of these three years of drought.

Senator **Bradley**. Mr. Lawson, what is the status of the water meter project?

Mr. **Lawson**. By status you are referring to how the constituency feels, or how the elected officials feel?

Senator **Bradley**. Well, why don't you survey the range, survey the whole range. Give me everyone's opinion.

Mr. **Lawson**. There have been a number of surveys conducted, and I would say the most recent surveys indicate that the public is becoming more aware of the problem. I think the latest figures I heard, that the majority are in favor of meters at this time, although I know there are many out there who do not favor them. Being a politician, I practically cut my own throat by coming out in support of them, because to me, unless you have lived without water in other areas, you don't really understand. And if you don't know all the ramifications of this bill as an ordinary red-necker from Nevada, you could say we have never had meters and we don't need them, and I don't want them. And that is the end of the argument.

Personally, I think if you take a broader view and you understand what is trying to be accomplished, that you have to support the meters.

Senator **Bradley**. And you think that is ultimately what the area will agree to?

Mr. **Lawson**. I think they will eventually, yes.

Senator **Bradley**. And how much savings will you get because of the meters?

Mr. **Lawson**. Well, that would be part of the conservation plan. I don't know really, maybe our Executive Director could give you more information on that. I don't know what the actual number is.

Senator **Bradley**. But you do think that the legislation, if it is passed, that the meters will be installed?

Mr. **Lawson**. I think so, yes.

Senator **Bradley**. Now, could you explain how the Preliminary Settlement actually provides Truckee Meadows with drought relief?

Mr. **Lawson**. As I understand it, there would be 39,500 acre-feet stored in Stampede, which would provide us during drought years with adequate water supply to meet the needs of the municipal and industrial. I might add to what Virgil said, that our drought year supply is calculated on the 1932–34, which was the worst case in history in our state. There are clear indications this year that we are going to be, that we may go beyond those 1932–34 drought situations, and our community is thereby placed in jeopardy of having severe problems because of it this year. So I think if we had another year or two of a drought, and that is being brought home more and more to the population every year we go through a drought, the need for meters.

Senator **BRADLEY**. But the 39,500 acre-feet that is stored in Stampede Reservoir?

Mr. **LAWSON**. Hopefully, by this legislation, yes.

Senator **BRADLEY**. To be drawn out in circumstances of drought?

Mr. **LAWSON**. In a drought year, yes.

Senator **BRADLEY**. And what triggers that?

Mr. **LAWSON**. There is a metered rate—I am sorry. There are rates that are required by the Orr Ditch Decree and by other legal requirements placed on the river that would indicate in April of any given year there is X number of water in the mountains because of snowfall. When you fall below that requirement you are in a drought situation. Now, there is a critical drought and, I can't remember the other terms. Steve Mack could probably answer them better than I am doing here, but——

Senator **BRADLEY**. The triggering point is, when the river reaches a level that goes below a certain point, water is then released from stampede?

Mr. **LAWSON**. That is correct.

Senator **BRADLEY**. And that extra storage is what is attractive to you, Mr. Wedge, and your group? Is that not correct?

Mr. **WEDGE**. That is certainly one of the major factors that cause us to be supporting this legislation and the Negotiated Settlement.

Senator **BRADLEY**. Would you say that is the major benefit for the Reno-Sparks area?

Mr. **WEDGE**. I would say that that is the major benefit that will be enjoyed by the City of Reno, City of Sparks, and Washoe County.

Senator **BRADLEY**. In this kind of negotiation, where reasonable people sat around the table, you obviously advocated this objective. What did you have to give up in order to get it?

Mr. **WEDGE**. I am not sure that—well, actually there has been a number of things that, or benefits that the area has given towards this program.

Senator **BRADLEY**. You didn't really have, I mean, for example, you were not at some point opposed to the Pyramid Lake fisheries issue, or you weren't opposed to any of these other parts of this provision. You weren't opposed to the utility, for example, getting its share in this process at any point?

Mr. **WEDGE**. That is correct.

Senator **BRADLEY**. Your objective was simply to assure a reasonable water supply for the Reno-Sparks area in a drought year?

Mr. **WEDGE**. That is correct. This storage would give us normal flow through three drought years, and that is a tremendous benefit to us because, as I said before, coming this summer if we don't get the precipitation in the mountains between now and late spring, we are going to be faced with watering our lawns maybe once a week, having restrictions on flushing our toilets.

Senator **BRADLEY**. Have you done any work or analysis that would indicate if you get this kind of assurance of water, what it would mean for the economic development of the Reno-Sparks area?

Mr. **Wedge**. Yes, if we get this insurance, why, we will be able to go on for a period of 40 years free of the problems we will have of drought years.

Senator **Bradley**. So that you foresee the additional 39,500 acre-feet in storage as sufficient to take care of the water needs for growth in the Reno-Sparks area for 30 or 40 years?

Mr. **Wedge**. Yes. We have, it is my understanding that we have about 119,000 acre-feet of water available for, and I say the Sierra Pacific Power Company has that acreage-feet available for future growth. And with this extra storage this would, added to that, that would give us a normal flow that would accommodate that much growth just year in and year out.

Senator **Bradley**. So you are basically saying this would give you 160,000 acre-feet?

Mr. **Wedge**. 119.

Senator **Bradley**. Including the storage?

Mr. **Wedge**. Yes, that is correct. We have 119, we lose—we only can enjoy 58 percent of that in a drought year. Now, if we have the storage we can, that will take care of us, added to what we have, that will give us a normal flow, a normal use during those drought years.

Senator **Bradley**. Does anyone on the panel want to address the question of the TCID? Any thoughts, suggestions? Every panel has this opportunity.

Mr. **Lawson**. I don't think we have any solution for you, Mr. Chairman. We just feel that we have got to manage our water better. It is a precious resource that we must take care of, and the Operating Agreement conservation plan should take care of that. As far as the TCID goes, I don't think any of us have an answer to that. We have tried it every way it can be done, and we are not getting anywhere.

Senator **Bradley**. Okay. Let me thank the panel very much for your testimony. It has been helpful, and I appreciate your willingness to split over the lunch hour. Thank you very much.

Our next panel consists of Joe Ely, who is Chairman of the Pyramid Lake Paiute Tribe. Mr. Ely, welcome to this subcommittee. Please take, if you can, five minutes to summarize, and then I will ask a few questions.

STATEMENT OF JOSEPH H. ELY, CHAIRMAN, PYRAMID LAKE PAIUTE TRIBE OF INDIANS

Mr. **Ely**. Yes, Mr. Chairman, after nearly 100 years of conflict I will be glad to be brief. I brought with me our tribal attorney, Bob Pelcyger, as well as our Vice Chairman, Norman Harry; Councilman Robert James; and our hydrologist Ali Sharoody; and our Director of Fisheries, Paul Wagner, should you have any questions that need to be answered that I am not able to.

My name is Joe Ely. I am Chairman of the Pyramid Lake Paiute Tribe. Before I get started I would like to mention that it is very probable that we wouldn't be here today without the leadership and ability of Senator Harry Reid, and we certainly want to commend him for coming into a situation that was very risky, and put together a panel who were at one time adversaries and get us at the table to talk and sit down and work out a reasonable solution. We feel very strongly that this would have never happened unless a person of his stature and his leadership took a hold and did this. And we would like to commend Senator Harry Reid.

As you are probably well aware, this struggle has been going on for a very long time. Our people have been faced with the loss of our fishery, and then the war that ensued after that to try to regain our fishery and retain our culture and our heritage. It has been a very, very long time, nearly 90 years, and it gives me great pleasure today to sit before you and great honor to give our full support and endorsement to S. 1554, which we feel is a very good beginning in putting together an end to not only the water wars, but solutions, real solutions to the problems that have hampered and hurt our tribe for the last 100 years.

I have a prepared statement that I have turned in. I only have a few things that I would like to elaborate on before I open it up for questions. One of the main and most important things in this bill that needs to be understood is that all portions of this bill, all the titles of this bill are interrelated. And although there is some temptation to take one title or another title and pick that apart without looking at the others, I think we need to careful and understand that all of these are interrelated titles, and when one is hampered with, then another must be hampered with in order to make the thing work. So, as this bill is marked up, Mr. Chairman, I would ask that all of it be kept in context, and understand the interrelationship.

I would also like to say that there have been some suggestions this morning, and I have noticed in some of the other testimonies, about the lower river restoration program, as well as the delta access, that they be made mandatory in the bill. We agree with this proposal, as well as some of the other proposals that we have looked at and some of the other testimonies. And we would ask that you continue to look hard at these questions and endorse these proposals.

Finally, I would like to say one last thing, and that is after experiencing what happened this morning on the panel from the Department of the Interior, I would just like to say that what you experienced for 50 minutes we have experienced for 100 years. And if there is any temptation to turn the negotiations or any of this process or solutions over to the Interior, we would suggest that Congress have a direct hand in it, and in fact lead Interior by the hand so that it can have solutions instead of another 100 years of conflict and another 100 years of no solutions.

Finally, Mr. Chairman, I would like to just sum up by saying that this bill is a good bill as introduced. We do have some amendments to it, and they are in our testimony. We are ready and willing to sit down with the committee and try to work out any type of disagreements that there might be, or work out any type of solution. We remain flexible and continue to look forward to putting this whole thing together. Hopefully at the end of the year we will be able to have a bill that will solve the water problem for our area and for our people.

Again, the Pyramid Lake Paiute Tribe endorses S. 1554.

[The prepared statement of Mr. Ely follows:]

TESTIMONY OF JOSEPH H. ELY
CHAIRMAN OF THE
PYRAMID LAKE PAIUTE TRIBE OF INDIANS
ON S. 1554
BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
OF THE
SENATE COMMITTEE ON ENERGY
AND NATURAL RESOURCES

February 6, 1990

Mr. Chairman, distinguished members of the Committee, I am honored to testify before you today on matters of grave importance to my Tribe, water and fish. My name is Joe Ely, I'm the Tribal Chairman for the Pyramid Lake Paiute Tribe.

It is very hard for me to convey what this moment in history means to my Tribe. The destruction of our way of life began 146 years ago when our ancestors had their first contact with the white man, Captain John C. Fremont and his party. History records that my people were pleased and excited to share our treasures with those strangers. Little did we know what they had in store for us.

We are here today as equals. We have fought very hard over several decades to attain that status. It was not easy. We had to overcome enormous obstacles, including the United States Supreme Court, a faithless federal fiduciary, and a dysfunctional system of justice. We are here today with new partners and friends. For a very long time we were alone. We are here today to mark a new moment in history, when past mistakes are recognized and exposed and healing and restoration begin to take hold. My people will look back at this day as a marker, a favorable turning point. It is a privilege and an honor to be here representing not only the current members of my Tribe but also our ancestors who suffered and persevered and our children who will carry on our heritage and traditions.

The Pyramid Lake Indian Reservation is located 36 miles northeast of Reno, Nevada and is 475,000 acres in size. Pyramid Lake is about 115,000 surface acres, located totally within the boundaries of the Reservation. Pyramid Lake receives its water from Lake Tahoe, 100 miles to the southwest via the Truckee River which flows through the Cities of Reno and Sparks and on to Pyramid Lake. Pyramid Lake is a terminal body of water with no outlet and with only the Truckee River as its supply of inflow.

The Tribe derives most of its livelihood from the Lahontan cutthroat trout fishery by selling use permits for fishing, boating and camping. Many of the families residing on the Reservation are employed by our fisheries program and related pursuits with the balance employed in the tribal administration, private enterprise, cattle operations, and off reservation employment in nearby Reno. We have a total membership of about 1800 people of which about 1500 reside on the Reservation.

To understand the significance of water to our people, specifically the importance of the Truckee River water, you have to go back to our origins. The legend of the Stone Mother tells of the origin of our people. It tells of settlement of the Tribe, cui-ui tuccatta (cui-ui eaters); it tells of the Lake's origin, cui-ui pah (cui-ui lake); and the origin of its fish, the cui-ui. It tells us that all this creation was simultaneous, that the son of the Stone Mother became our ancestor, that the tears of the Stone

Mother became our Lake, that the Lake's shore became our home and its depths the home of our fish, the cui-ui. This legend sets our identity and forever fixes the components that make up our way of life.

When we talk of the water it must be understood that it is a major component of our identity and way of life. Those components are the people - cui-ui tuccatta, the Lake - cui-ui pah and the fish - cui-ui. These are inseparable components and one does not exist without the other. I know one might make light of this significance or write it off as romance, but to us it is everything. As we watched the celebration of the Statute of Liberty and the controversy surrounding the desecration of the flag, we know that your culture also holds important its own symbols, identities and rituals.

Since time immemorial the Tribe has lived near the shore of our Lake and has drawn its sustenance from its abundant supply. We were a prosperous people, our main sustenance being the cui-ui fish found only at Pyramid Lake and to a lessor degree from the large Lahontan cutthroat trout which also inhabited the Lake where they grew to world record size, 41 pounds. Most of our lives were spent gathering food and partaking in various festivals and ceremonies associated with those gatherings. There were rabbit drives, deer hunts, pine-nut gatherings, mudhen and duck harvests at adjoining Winnemucca Lake, trout fishing and many other forms of harvesting ventures. But nothing compared to the annual harvesting of the cui-ui.

The cui-ui would run in mid-spring which would allow for about a two or three week harvest. The remainder of the year the cui-ui would stay in the depths of the Lake and would be unavailable for catch. As the run developed, word was spread and the Tribe, made up of scattered bands, would come together to renew friendships and aid in the long but happy work of the harvest. Excitement and festivity would fill the air as many cui-ui were caught, dried, and stored for the coming year. The fish were abundant and could be caught by hand and stories are told of the water turning black with the fish and of small children climbing on the many backs of the fish as they moved into the shallows on their journey up-river to their spawning grounds.

This was a time like no other. The animation in the eyes of the elders as they tell these stories only give us a glimpse of its excitement. This way of life continued for many, many generations but as the twentieth century started it all came to an abrupt end.

In 1902 under the infant Bureau of Reclamation, the first reclamation project was authorized. The plan was to direct water from the Truckee River upstream of Pyramid Lake to what was then a large desert basin to the east and to turn the sand into green fields and farm land. This project is known as the Newlands

Project which has proven to be a failure as an agricultural project, has dealt a tremendous blow to the Tribe and is currently spelling death to any and all wildlife associated with its operation. To accomplish the Project, in 1905 Derby Dam was completed and water was diverted to the Project. Within the next 40 years the elevation of Pyramid Lake dropped 70 feet creating an impassible delta and barrier between the lake and river, the Lahontan cutthroat trout became extinct in Pyramid Lake and the cui-ui numbers shrunk to a point where harvest became impossible. Pyramid's sister Lake, Winnemucca, dried completely taking with it its wildlife and wetlands habitat. It appeared our way of life and existence as a people were nearing an end.

In 1944 the Federal Government dealt what should have been the coupe de grace to the Tribe when the Bureau of Indian Affairs negotiated on our behalf the Orr Ditch Decree. The decree was to put down in writing the various water allocations on the Truckee River. It was BIA's task to use the Winters Doctrine and protect our water to preserve our way of life and our identity as a people. But early on in the forming of the decree BIA made a terrible error, an error that would set the tone for many decades of litigation and hardship for our Tribe. BIA determined that the government's purpose was that we should be farmers and even though we continued to explain our status as fisherman, BIA went in to negotiate our rights only as farmers and not as fishermen. The result was after the final gravel fell and the Orr Ditch Decree was set the Tribe was to receive a water right of 31,000 acre-feet total from the Truckee River to be used only for irrigation for agriculture. Pyramid Lake and the fisheries were given no right of any kind and would only receive what was leftover after Newlands Project and all other water rights were taken. From receiving 450,000 acre-feet of water annually (it takes at least 400,000 acre-feet annually just to replace evaporation losses and maintain the Lake level) into Pyramid Lake before the turn of the century to ending up with a right to only 31,000 acre-feet for agriculture irrigation and zero right for fisheries after the Orr Ditch Decree, our Tribe's ability to maintain its livelihood and way of life became a near impossibility.

Let us tally up the score of destruction the Newlands Project has exacted. Since 1905 it has completely destroyed the natural Lahontan cutthroat trout fishery at Pyramid Lake which consequently completely destroyed the Tribe's economy leading to reliance on Federal funds. It has all but led to extinction of the cui-ui, which is the identity and major component of the Tribe's way of life. It has dried up totally Winnemucca Lake which was a thriving wetlands and water foul area. It has caused major destruction of the Stillwater Wildlife Management Area near Fallon, Nevada where the Project spills its toxic poison into the wetlands after irrigating its fields, and is currently destroying the world's largest natural pelican refuge, Anaho Island, by contaminating the pelicans' food supply at the Stillwater wetlands.

Much of what has happened since the Orr Ditch Decree was entered in 1944 is well documented. Our Tribe has engaged in litigation for many decades to reclaim the water necessary to restore our fisheries. We have suffered some loses and won some victories, but one thing I can tell you is through the blessings of God and the tenacity of our people, we are still here. Our people and our resource, although crippled and many times down, are surviving and recovering.

Over one hundred years of conflict, the longest standing water war in the history of our Country. Can you compare any conflict this Country has endured for over one hundred years? My Tribe, my people, have endured this conflict and this threat for a long time. That is why it gives me great pleasure and it is a great honor to be seated here today to support S. 1554 and to take a place with you in history as we move to repair the past and insure the rebuilding and future of our Tribe and confirm the precepts of justice and good in this awesome and wonderful Country.

The Lahontan cutthroat trout have been reintroduced into Pyramid Lake and thanks to the continued financial support of Congress we have managed to build hatcheries ranked with the best of the Nation. We have turned the trout fishery into a success which ranks within the top three trophy fishing lakes in the United States. The Lahontan cutthroat trout is still listed as threatened, primarily because of its reliance on a artificial hatchery spawn, but its recovery is steady and it is our hope a complete recovery, including a natural spawn in the Truckee River, will occur in the future. The success of the Lahontan cutthroat trout will spell economic recovery for our Tribe.

The cui-ui are another story. They have survived owing to some fortuitous wet years and have been doing better recently because of this unusually wet cycle in the early and mid-1980s. But the long term outlook is not good. Cui-ui do not reproduce well in a hatchery environment. The cui-ui are not only an endangered species but are also an endangered genus found only in Pyramid Lake. They still stand on the brink of extinction and if it were not for a couple of flood years in our recent past they would now be gone forever.

There is only one solution to the cui-ui's problem, water. The water must be of sufficient quantity to allow the fish over the Lake's delta and into the River to spawn and of sufficient quality to provide suitable habitat for that spawn.

S. 1554 will address these problems. The Pyramid Lake Paiute Tribe enthusiastically supports enactment of S. 1554. Later in this testimony I will describe the Tribe's proposals to clarify and strengthen its provisions. But first, I would like to summarize the major provisions of S.1554 and describe their relation to the

Pyramid Lake Paiute Tribe and the Pyramid Lake fishery.

It is important to recognize that the Tribe's interests are involved and affected by every subject addressed in the bill, the Interstate Allocations, the Reservoir Operations, the Wetlands Water Right Acquisition Program, the Fishery Recovery and Enhancement Program and the Economic Development Program. The Tribe therefore had no choice; we had to be actively involved in every aspect of the discussions and negotiations which led to the formulation of S. 1554.

I also want to stress the interrelated nature of the provisions of S. 1554 which cut across its different titles. This is especially important to the Tribe. Let me give you an example.

Section 401(a) provides that the water saved from the elimination of the agricultural outlease program at the Fallon Naval Air Station will be devoted to the Pyramid Lake fishery. Some parties have suggested that that water should be used for competing purposes such as the wetlands. Other parties have been critical of the provisions of Titles I and II on the grounds that they eventually could result in greater upstream depletions of Truckee River water and therefore reduced inflows into Pyramid Lake.

What has generally gone unnoticed -- except by those directly involved in the negotiations -- is that these different sections and titles of S. 1554 are inextricably linked. The Fallon Navy water provision does not stand by itself; it is tied directly to Titles I and II. The Fallon Navy water replaces the water that Pyramid Lake could lose under Titles I and II. Without the Fallon Navy water, there would not be an Interstate Allocation or a Preliminary Settlement Agreement because neither of those agreements would have been possible unless the Tribe were willing to give up some current Truckee River inflows to Pyramid Lake. Similarly, any relatively small amounts of drain water which would be lost to the wetlands ~~as a res~~ult of the Navy's conservation program should be replaced by increased water right acquisitions pursuant to Title III.

In marking up S. 1554, the Committee must keep the big picture constantly in mind and must resist viewing each of its individual components in isolation. Otherwise, the fragile underpinnings of S. 1554 could shatter.

Title I is the Interstate Allocation. This is important for everyone in the Lake Tahoe, Carson River and Truckee River Basins. The necessity of interstate allocations has been recognized at least since 1950. Representatives of the States of California and Nevada have been working on solving that problem since that time.

Firm interstate allocations are particularly important to the Pyramid Lake Paiute Tribe since Pyramid Lake sits at the end of the system and receives whatever water is leftover after all diversions. Without those allocations, no one knows how much water will be diverted from the Lake Tahoe Basin or will cross the state lines.

I would like--to stress several things about the interstate allocations. First, the Tribe stands to be affected by all three allocations, Lake Tahoe, Truckee and Carson. The Lake Tahoe Basin is part of the upper Truckee River system and is artificially severed only for purposes of administration and enforcement. The Truckee connection is obvious; all upstream depletions reduce the spawning flows in the lower Truckee River and the inflows to Pyramid Lake. With regard to the Carson, the Tribe has a vital interest in maximizing Carson River inflows into Lahontan Reservoir. Any reductions in those Carson River flows will be replaced by corresponding increases in Truckee River diversions to Lahontan Reservoir and the Newlands Project.

Second, it is absolutely essential to the Tribe that Title I include a provision declaring that all of the remaining flows of the Truckee River are withdrawn and set aside for the Pyramid Lake fishery and are held in trust by the United States for the Pyramid Lake Paiute Tribe. Without this provision, the Tribe would not be willing to relinquish its claims which make the Lake Tahoe and Truckee River allocations possible. This linkage is critical. The remaining so-called "unappropriated" Truckee River must be reserved for Pyramid Lake pursuant to federal law; otherwise the Tribe will withdraw its support for Titles I and II.

Third, by reserving this remaining "unappropriated" or "surplus" water to the Tribe, S. 1554 would settle lawsuits in both States regarding that issue. S. 1554 would not answer the questions presented in those cases as to whether the Tribe's claim to that water is barred or whether the Tribe's right to that water extends back to aboriginal times or to 1859 when the Pyramid Lake Indian Reservation was established. Those issues would become moot by the prospective reservation of the Truckee River waters which have not been appropriated by others or apportioned to the States.

Fourth, the Tribe recognizes that the Tahoe and Truckee allocations to California are generous. Both allocations provide California with considerably more water than existing uses or existing rights even though there is not enough water in the Truckee River system to meet all downstream uses. The Tribe agreed to these additional allocations for three reasons: (i) because it realized that an interstate agreement would not be possible unless water was provided for the planned growth at the Lake Tahoe and the potential growth in the California portion of the Truckee Basin; (ii) because of everyone's desire to resolve the interstate conflict which has raged for decades; and (iii) because of the desirability of involving both States in the new coordinated operation plan for the reservoirs on the upper Truckee River in California. But it should be recognized that California is getting a very good deal, much better than anything it could expect from the Supreme Court in an equitable apportionment action since the Truckee River is fully appropriated (including the flood flows which are needed to maintain the level of Pyramid Lake) and virtually all of the existing uses are in Nevada (including Pyramid Lake's endangered and threatened species). See Colorado v. New Mexico, 467 U.S. 310 (1984).

Fifth, I want to stress the necessity of paying careful attention to the conditions on California's Truckee River allocation. These conditions are as important as the allocation itself. They are intended to minimize the adverse impacts of California's new uses on downstream uses in Nevada, particularly at Pyramid Lake. Without those conditions, the Tribe would not agree to that allocation.

Title II of S. 1554, although relatively short, is extremely important. The Preliminary Settlement Agreement between the Tribe and the Sierra Pacific Power Company is an extraordinary achievement. It is the glue which holds the rest of S. 1554 together, both hydrologically and politically. It is also a creative solution to a complex problem which provides important storage benefits to municipal, industrial and domestic (M&I) water uses in Reno and Sparks under drought conditions and significantly enhances spawning flows in the lower Truckee River. The Tribe, the federal government and Sierra Pacific have been litigating these issues for many years. I hope the Preliminary Settlement Agreement serves as a model which will help resolve similar conflict between M&I water uses and significant environmental values. Sierra Pacific deserves commendation for recognizing the desirability of making peace with the Tribe and of accommodating the endangered and threatened species in the lower Truckee River and for having the courage to act on its convictions.

The Preliminary Settlement Agreement is complex and difficult to understand. At bottom it rests on five key concepts.

First, the federal reservoirs on the Truckee River system are used to provide increased and enhanced storage both for M&I uses in Reno and Sparks and for spawning flows in the lower Truckee River.

Second, the Sierra Pacific Power Company agrees to forego its right to releases of water from the Truckee River reservoirs for the generation of hydroelectric power when and to the extent that that water is not needed to satisfy other rights. In other words, water will not be stored and released solely for single purpose hydroelectric generation. This will result in a fundamental change in the regimen of the Truckee River which will bring it much closer to its natural condition, much better suited to the spawning needs of the cui-ui.

Third, Sierra Pacific's existing M&I water rights which are not needed to meet its requirements in marginal, normal and wet years are retained in storage. Storage credits are allowed to be built up and accumulated for M&I purposes up to certain specified levels. All of the water in excess of those levels gets converted to fishery purposes and is then released to enhance the spawning run.

Fourth, the Preliminary Settlement Agreement imposes strict conservation requirements. Water meters must be installed on all commercial and residential customers. An inverted block rate pricing structure is required in order to provide financial incentives for permanent water conservation measures, such as xeriscape landscaping. Reno and Sparks must adopt mandatory conservation programs designed to achieve at least a 10 percent reduction from the normal demand in a drought year. Over the long term the Tribe is hopeful that these measures, combined with the increased cost of treating domestic water supplies, will result in increased awareness of conservation and ultimately reduced M&I diversions to Reno and Sparks. Incidentally, considerable progress has been made during the last two months on the water meter and conservation agreements which must be reached before the Preliminary Settlement Agreement becomes effective.

Fifth, the Preliminary Settlement Agreement requires that new M&I development must bring the water rights needed to supply that development. These water rights will be acquired from existing agricultural uses and transferred to M&I purposes. This means that increased urban growth will displace agricultural use and will not further deplete the Truckee River and diminish inflows to Pyramid Lake.

Title III addresses the problems of the important wetlands in the Truckee and Carson River watersheds, particularly the Stillwater wetlands in Lahontan Valley. The solution, retiring current agricultural lands at the Newlands Project and transferring their water rights to the Stillwater wetlands, is not only good for the wetlands but is also compatible with the Pyramid Lake recovery and enhancement program. The Tribe has worked closely with the Fish & Wildlife Service, the Environmental Defense Fund, The Nature Conservancy and the members of the Wetlands Coalition to implement the Stillwater wetlands water rights purchases with the funds appropriated by Congress for FY'89 and FY'90. We have worked hard and showed that a fair and balanced program can be planned and carried out.

The Tribe is particularly pleased to be involved in the successful program to restore the Stillwater wetlands. As I previously stated, the Tribe lost the extraordinarily productive wetlands and wildlife area at Winnemucca Lake when that Lake dried up in about 1940 due to Truckee River diversions to the Newlands Project. The health of the pelicans nesting on Anaho Island historically depended on the Winnemucca Lake wetlands. The pelicans switched over to Stillwater when Winnemucca Lake dried up. Now they are in jeopardy again because Stillwater's wildfowl and fish are contaminated with the toxins which drain off the Newlands Project.

There is also an important lesson to be derived form Title III. For a long time, supporters of the Stillwater wetlands sought to maximize diversions of Truckee River water away from Pyramid Lake and to the Newlands Project and to perpetuate the gross waste of water at the Project because the wetlands were dependent on its runoff. The Tribe is pleased that this wetlands versus endangered species dichotomy is no longer in vogue. It is being replaced by the recognition, embodied in S. 1554, that the Newlands Project is the common and root cause of the problems at both Pyramid Lake and Stillwater. The solution is to reduce significantly the amount of water used for agriculture on the Newlands Project and to apply that water instead to both Pyramid Lake and the wetlands. The eventual goals should be to eliminate all Truckee River diversions to the Newlands Project and for the Stillwater wetlands to receive as much Carson River water as needed to maintain viable, productive and healthy wetlands in the Lahontan Valley. S. 1554 is compatible with these ultimate goals and sets the wheels in motion toward achieving them.

Title IV is extremely important. As I previously noted, Section 401, the Fallon Naval Air Station provision, is intended to make up for the increased Truckee River uses in California, Nevada and

Reno and Sparks under Titles I and II of S. 1554. Among other things, Section 402 provides that the recovery plans adopted by the Secretary of the Interior pursuant to the Endangered Species Act must take account of and include the Title I interstate allocations, the Title II water management agreements and the Section 401 Fallon Naval Air Station program. This insures that the recovery plans will be consistent with the settlements embodied in the other provisions of S. 1554.

The recovery plans developed and implemented pursuant to Title IV are extraordinarily important. From the Tribe's perspective, they are the linchpin of the bill. The Tribe has several suggested amendments to Title IV. These amendments, which are described below, will strengthen Title IV and facilitate the implementation of the cui-ui and trout recovery plans.

Title V also is critically important to the Tribe. The economic development trust fund for the Pyramid Lake Paiute Tribe is intended to fulfill the federal government's original commitment when the Pyramid Lake Indian Reservation was established -- to provide an economically self-sustaining homeland for the Pyramid Lake Paiute people. Our Tribe is fortunate; our Reservation is blessed with invaluable resources, principally our beautiful Lake and our magnificent fishery, and we live in our aboriginal setting where our heritage and traditions can be maintained. Unfortunately, the federal government not only failed in its fiduciary responsibility to protect our resources from others; it planned, built and operated the Newlands Project which nearly destroyed our most valuable asset.

The government used, or rather abused, the legal system to put the final nails in our coffin. It deliberately subordinated and sacrificed the Tribe's right to enough water to maintain the Pyramid Lake fishery to what government officials described as the "larger interests" involved with the reclamation of arid lands. We were not even allowed to have our day in court; the same government attorneys who supposedly represented the Tribe in reality represented the Newlands Project farmers who were taking our water; the adversary system of justice failed and our most basic right to a full and fair opportunity to be heard at a meaningful time in a meaningful way was ignored. After a thorough review of what had happened, Solicitor General Rex Lee told the United States Supreme Court in 1983 that the United States had "compromised its duty of undivided loyalty to the Tribe" and acted as a "faithless fiduciary." He went on to state: "In no other case to our knowledge has the United States acted with regard to Indians as it did in the Orr Ditch proceedings."

The government's misdeeds were not limited to the diversion of Truckee River water to the Newlands Project. As documented by Professors Martha Knack and Omer Stewart in As Long As The River Shall Run, the dominant society went after everything of value the

Tribe had and the government either sat back and watched or participated actively in the take-away game.

Promises were broken. In 1904, Congress passed a law providing a unit of Newlands Project to be built on Dodge Flat on the Pyramid Lake Reservation. That Project, which would have irrigated about 3,000 acres of tribal land at a current day cost of approximately $7 million, was never built. The Title V economic development trust fund also will help compensate for that breach of trust.

Injury was added on injury. In the 1960s, the Army Corps of Engineers, in cooperation with Reno, Sparks and Washoe County undertook a flood control project in the Truckee Meadows which is about 30 miles above the Pyramid Lake Reservation. As a result of that work in the Truckee Meadows, the volume of Truckee River water flowing through the Reservation during flood events was significantly increased. The Corps therefore straightened the River channel through the Reservation and removed virtually all of the riparian vegetation. The spawning habitat was severely degraded, the water temperatures have increased owing to the loss of the shade canopy, and several thousand acres of the best farmland on the Reservation were lost to erosion. The Title V economic development trust fund also will help compensate for these losses.

The economic development trust fund is necessary to enable the

Pyramid Lake Paiute Tribe to obtain the economic benefits from the provisions of S. 1554 and its associated agreements which provide for the enhancement and recovery of the Pyramid Lake fishery. The Tribe needs new, improved and expanded facilities to attract more visitors to Pyramid Lake to fish, swim, camp and boat and to enhance the income the Tribe receives from their visits. For example, we need additional and better boat ramps, protected swimming areas, docks, marinas, boats, shops, a restaurant and a hotel. We have plans for these facilities but no money, particularly because we have had to spend so much to protect our rights and our resources. At one time, we started work on a Paiute cultural museum. The outer shell of the building is finished but we have not been able to complete it due to lack of funds. The unfinished and unused museum, which is very creatively designed, stands today as a symbol of our need and thirst for capital.

The facilities I just described fulfill the same purpose as the irrigation projects which Congress has funded as parts of other Indian water rights settlements. Congress wisely has recognized that water and land alone are not enough, that tribes must be provided the necessary capital without which the water cannot provide the income and the jobs which are so desperately needed to achieve economic self-sufficiency.

In our situation, the best source of jobs and income is to capitalize on the fishery and recreational potential of Pyramid

Lake. This kind of development will benefit not only the Tribe and our members, but the entire regional economy. In increasing numbers Nevadans are beginning to recognize that a revived and world famous troophy fishery at Pyramid Lake with improved facilities for visitors will act as a magnet attracting visitors from all over the nation and the world. Reno and Sparks will serve as the gateways to this national treasure, just as they do now with regard to Lake Tahoe.

The Pyramid Lake Paiute Tribe is committed to its goal of providing jobs to the 47% of our members who are unemployed and to providing a future of hope for a better standard of living to our people.

We are further committed to the goal of becoming economically self-sustaining and independent and relying on ourselves, as we once did, for our welfare and care.

This economic development fund in S. 1554 will help make these goals a reality.

As I previously stated, the Pyramid Lake Paiute Tribe enthusiastically supports enactment of S. 1554. The Tribe recommends the following changes to clarify and strengthen its provisions.

1. Section 2 of S. 1554 should be revised to read as follows:

Section 2. FINDINGS AND PURPOSES.

(a) FINDINGS. The Congress finds and declares that:

(1) Litigation has raged on the Truckee and Carson Rivers in Nevada and California since the turn of the century.

(2) Despite the decades of litigation, there are many outstanding issues which have not been resolved and the litigation continues at an ever increasing pace.

(3) Pyramid Lake and the lower 20 miles of the Truckee River are included in the Pyramid Lake Indian Reservation which has been the home of the Pyramid Lake Paiute Tribe of Indians since time immemorial.

(4) Pyramid Lake is one of the most beautiful desert lakes in the world and once was one of the most magnificent inland fisheries in the world. Its recreational potential is enormous. Two principle fish, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi) reside in the Lake. The fishery was the primary source of the Pyramid Lake Paiute Tribe's sustenance and livelihood and also played a central role in its culture. These species are now classified respectively as endangered and threatened under the Endangered Species Act.

(5) Since 1905, there have been very large diversions

of Truckee River water away from Pyramid Lake to the Newlands Federal Reclamation Project. These diversions lowered the level of Pyramid Lake by approximately 70 feet and reduced its size by approximately one-third, from 150,000 acres to 100,000 acres. They also resulted in increased salinity of the Lake's waters, drastically reduced spawning flows in the Truckee River, created a delta at the mouth of the Truckee River which prevented the cui-ui and the Lahontan cutthroat trout from reaching their spawning grounds, and totally destroyed the wildlife and wetlands habitat at nearby Winnemucca Lake.

(6) The riparian and spawning habitat in the lower twenty miles of the Truckee River also was severely damaged by an Army Corps of Engineers flood control project.

(7) Despite the degradation and abuse to which the Truckee River has been subject, the Pyramid Lake Fishery can be enhanced and restored.

(8) The wetlands adjacent to the Newlands Reclamation Project are a vital component of the Pacific Flyway. These irreplaceable wetlands are threatened with destruction owing to the combination of toxic drainage from the irrigated areas of the Newlands Project and reduced return flows due to regulations requiring higher irrigation system efficiencies.

(9) The States of Nevada and California have been attempting to negotiate interstate allocations of the waters of the Lake Tahoe, Carson River and Truckee River Basins for more than 40 years.

(10) The Cities of Reno and Sparks depend on the Truckee River for their domestic water supplies. They are growing rapidly and their limited water supplies are not adequate to satisfy their needs under drought conditions. Stampede Reservoir, a component of the Washoe Federal Reclamation Project, was intended to provide supplemental water supplies to Reno and Sparks under drought conditions but the water stored in Stampede Reservoir is needed for the endangered cui-ui and the threatened Lahontan cutthroat trout.

(11) This Act and its associated agreements will further the purposes of the Endangered Species Act.

(12) This Act is consistent with Federal goals to protect valuable national wetlands from further environmental degradation and to preserve the habitat of many species of wildlife dependent upon these wetlands.

(13) It is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to support the resolution of disputes through settlements mutually agreed to by Indian and non-Indian parties.

(14) There is a recognition that final resolution of pending disputes through litigation would take many years and entail great expense to all parties, continue economically and socially damaging controversies, prolong uncertainty and environmental degradation, and seriously impair long-term economic planning and development for all parties.

(15) Agreements in principle have been reached under which fair and just settlements of pending litigation would be achieved, longstanding claims of the Pyramid Lake Paiute Tribe would be fairly and justly resolved, the fragile and sensitive environment in one of the most scenic and environmentally unique areas of the United States would be protected, preserved and enhanced, and fair and reasonable contributions would be made by the appropriate parties.

(16) The United States bears principle responsibility for creating the problems and controversies which this Act is intended to resolve. The United States should contribute to the resolution of those problems and controversies through the measures described in and authorized by this Act.

(b) PURPOSES. The purposes of this Act are:

(1) To fulfill the goals of the Endangered Species Act

by providing for the conservation and recovery of the endangered cui-ui and the threatened Lahontan cutthroat trout;

(2) To help fulfill the federal government's fiduciary obligations to the Pyramid Lake Paiute Tribe of Indians in a way which is fair and equitable to other water users and recognizes their vested and perfected water rights;

(3) To protect invaluable wetlands in northwestern Nevada from further degradation and to enhance the habitat of many species of wildlife which depend on the wetlands;

(4) To authorize the equitable allocation of the waters of the Lake Tahoe, Truckee and Carson River Basins between California, Nevada, the United States and the Pyramid Lake Paiute Tribe;

(5) To provide for the settlement of outstanding claims against the federal government and help end decades of litigation;

(6) To provide for utilizing the scarce water resources of the Truckee and Carson Rivers more effectively and efficiently for all beneficial purposes including maintenance of instream fishery flows and preservation of invaluable wetlands;

(7) To help reduce the effects of drought conditions on

the urban citizens of the Truckee Meadows in northwestern Nevada;

(8) To provide for the economic development of the Pyramid Lake Indian Reservation; and

(9) To provide the basis for a lasting, mutually beneficial partnership between the Indian and non-Indian people of northwestern Nevada.

Explanation: The Tribe's proposed findings and statement of purposes are considerably more detailed than those currently contained in S. 1554. They set forth the historical, legal, social and environmental context for the substantive provisions of S. 1554. The Tribe believes that it is particularly important for the bill to describe the role of the federal government in creating the grievances, problems and conditions which S. 1554 is intended to redress.

2. Title I, the Interstate Water Allocations, is in a state of flux. An important meeting was held in Sacramento, California on January 30, 1990 at which representatives of the Tribe and the two States reached general, conceptual agreement on the major allocation provisions governing the Lake Tahoe, Carson River and Truckee River Basins. Senator Reid's testimony includes the joint proposed changes to Title I which resulted from that meeting.

There are three matters related to Senator Reid's testimony on which the Tribe would like to comment. The first concerns section 101(b)(2) of S. 1554. That provision relates to the possibility that sewage effluent imported from the Lake Tahoe Basin into the Carson River watershed is discontinued. This matter is discussed in detail at pages 3-5 of the January 24, 1990 letter to Senator Bradley from the Carson Water Subconservancy District which was made available to the Tribe.

In that letter the District proposed two alternative amendments to Section 101(b)(2). The first is rather long, complex and obtuse. Frankly, the Tribe's representatives, including our attorney and hydrologist, do not understand what it would do or how it would work. The second option is a simple one sentence statement providing that decreed water rights would not be lost by virtue of the application of wastewater effluent for the irrigation of those lands.

The Tribe strongly supports the simpler, much more direct and understandable second option. One thing that the Carson and Truckee Rivers do not need is more unnecessary confusion and complexity.

The second matter concerns a very important aspect of the Truckee River Basin allocation to California. The Tribe's agreement to this allocation is contingent on the inclusion of a provision which requires that replacement water rights be obtained for any reduction in Truckee River flows caused by a change in the way in which sewage effluent is treated. The sewage effluent from the Town of Truckee in California and from the communities on the north and west sides of Lake Tahoe currently is treated and returned to the Truckee River through a groundwater injection system. If that method of treatment is changed by, for example, exporting the effluent out of the watershed or utilizing it for irrigation or for the maintenance of wetlands, the flows in the Truckee River would be reduced. The Tribe's position is that water rights would have to be acquired to the extent necessary to replace that water.

The Tribe is optimistic that agreement will be reached regarding this issue. We will keep the Committee apprised of our progress.

The third matter also concerns California's Truckee River Basin allocation. As I previously stated, this allocation is very generous and is intended to accommodate potential urban and suburban growth and expanded recreational opportunities. The Tribe strongly believes that one additional limitation is required to carry out this intent: no portion of this allocation should be used for commercial irrigated agriculture. There is and has been too much agriculture in the region which has resulted in several environmental disasters. To correct those problems, S. 1554 authorizes an expanded program to purchase agricultural water rights and to retire agricultural lands. It simply makes no sense to permit new commercial agricultural uses, particularly in the upper portion of the Truckee River Basin which has a shorter growing season than even the marginal Newlands Project. The Tribe is particularly concerned that in the absence of an express prohibition on new agricultural uses, water right speculators could conjure up and build short-term projects with the hope of eventually transferring the rights to other more valuable uses.

Since the Truckee River system is already over-appropriated and considerably more water is needed for Pyramid Lake's endangered cui-ui and threatened trout, S. 1554 should include an express prohibition on using any portion of California's allocation of Truckee River water for any new commercial agricultural uses.

We have not had sufficient time to work out all of our differences regarding Title I. The Tribe believes that most of those that remain are relatively minor and eventually will be resolved. The Tribe certainly will continue to work on these issues with representatives of California, Nevada, the United States and of Senator Reid's Office and will keep the Committee informed of our progress.

The Tribe currently supports the following amendments to Title I in addition to those described in Senator Reid's testimony:

a. The following provision should be added to Section 101:

STUDIES OF CONJUNCTIVE USE.-Nothing in this Act shall foreclose the right of either state to study, either jointly or severally, the use of surface water which might otherwise be lost to beneficial use, to enable conjunctive use of ground water. For purposes of this subsection, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River watershed.

Explanation: California and Nevada have proposed a provision similar to this. The Tribe's changes to the States' language are editorial. The Tribe does not believe that S. 1554 should refer to the "unappropriated" water of the Carson River since the Alpine Court specifically found that the Carson River is fully appropriated.

b. Sections 101(c) and 101(d) should be deleted. Their substance will be included in general provisions applicable to all three basins.

c. Section 101(e) should be revised as follows:

MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA.-Nothing in this Act precludes the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the Carson River Basin, provided that such storage facilities shall not result in the inundation of any portion of the East Fork of the Carson River within California.

CERTAIN RIGHTS, USERSS AND PROCEDURES RECOGNIZED AND CONFIRMED.-

(1) The right to change the beneficial use of water from irrigation to storage for municipal and industrial uses is recognized and confirmed: Provided, That such changes shall be in accordance with the Alpine Decree and applicable state laws.

(2) Water stored under the procedure described in subsection (1) may be diverted to storage in a given year and held for use in that or subsequent years.

(3) The operation of the reservoirs identified on pages 145 and 146 of the Alpine Decree is confirmed in accordance with the terms of that Decree.

Explanation: This language incorporates the essence of Section 101(e) of S. 1554. The Tribe's proposed changes are editorial. The Tribe believes that S. 1554 should not confirm any "historic practices" which are not included in the Alpine Decree unless these practices are described in detail so that everyone knows precisely what the agreement is.

d. Section 102(b)(1) should be revised as follows:

(1) The quantity of water diverted and used to make snow prior to the passage of this Act shall not be charged to the gross diversion allocation of either California or Nevada unless and to the extent that snow is produced for use outside the basin.

Twenty-five percent of any additional quantity of water diverted and used to make snow within the Lake Tahoe Basin initiated after the passage of this Act shall be charged to the gross diversion allocation of either California or Nevada.

Explanation: Recent published studies have revealed that there are losses associated with snow-making and that 25% is a reasonable estimate of those losses. Under the Tribe's proposed compromise, the use of all water to make snow initiated prior to the enactment of S. 1554 would not be charged to the allocation to either state but all subsequent diversions for that purpose would be charged 25% of the additional diversions. This seems fair and equitable.

e. The following provisions should be added to Section 102:

Water inflow and infiltration to sewer lines are not diversions of water and shall not be charged to the gross diversion allocation of either state.

Regulation of stream flow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either state.

Explanation: California and Nevada had proposed that these sections be added to Section 102 and the Tribe has accepted them in a slightly modified form.

f. Section 102(c)(2)(B) should be modified to provide a better, more detailed description of this particular diversion, perhaps by reference to the particular subdivision or to the number of the certificate of appropriation.

g. Section 102(c)(3) should be modified to read as follows:

The actual yield of the transbasin diversions identified in paragraph (2) may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right. Any such transfer shall be subject to the applicable laws of the state in which the right is vested or permitted. With the exception of the transbasin diversion described in subsection 102(c)(2)(B), all water made available for use within the Lake Tahoe Basin as a result of any such transfer shall not count against the allocations made by this section, and such water may be depleted within the Lake Tahoe Basin.

Explanation: Since the transbasin diversion described in subsection 102(c)(2)(B) counts against Nevada's allocation, any transfer of that right also should count. It is also important for this to provision to specify that only the "actual yield" of the transbasin diversions may be transferred. In some instances, the face amounts of the permitted diversions are significantly greater than the quantities of water which have actually been diverted.

h. The following new provisions should be added to Section

103:

INITIAL PYRAMID LAKE ALLOCATION.-There is allocated for use on the Pyramid Lake Indian Reservation in Nevada with the first priority the amounts provided in the Orr Ditch Decree. By appropriate court order, the United States, acting for and on behalf of the Pyramid Lake Paiute Indians, or the Pyramid Lake Paiute Tribe of Indians, shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so allocated so far as such change may be made without injury to the allocations made in this section to either state.

SIERRA VALLEY, CALIFORNIA.-There is allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States vs. Sierra Valley Water Company in the United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

NEVADA AND ADDITIONAL PYRAMID LAKE ALLOCATIONS.-There is allocated to the State of Nevada all water in excess of the allocations made in subsections ________________ of this section to the extent necessary to fulfill all of the rights established under Nevada law recognized in the Orr Ditch Decree and all other rights established and perfected in accordance with Nevada law prior to the passage of this Act. The remaining water of the Truckee River and its tributaries, in excess of the allocations in subsections ________________ of this section, of the allocation to Nevada in this subsection, and of the waivers set forth in sections

3 and 21 of the Preliminary Settlement Agreement, is set aside, reserved and withdrawn from further appropriation. The right to that remaining water shall be held by the United States in trust for the Pyramid Lake Paiute Tribe of Indians for the sole use and benefit of the Pyramid Lake fishery.

Explanation: The Tribe's proposals regarding the initial and additional Pyramid Lake allocations are extremely important.

The allocation of the Tribe's Orr Ditch agricultural rights was the first provision of Article VI of the proposed Compact which allocated the water of the Truckee River Basin. The Tribe believes that Section 103 of S. 1554 generally should follow the format of Article VI of the Compact except where changes are necessary. Since the allocation of the Tribe's Orr Ditch agricultural rights is intended to be the first priority of Truckee River water, the Compact format, with minor modifications, is appropriate.

The Tribe's proposed initial Pyramid Lake allocation is based on Article VI(A) of the Compact but includes two minor modifications: (1) the elimination of the words "to Nevada" in the first sentence to negate any inference that the Tribe's Orr Ditch rights are subject to Nevada's jurisdiction and control; and (2) the addition of "the Pyramid Lake Paiute Tribe of Indians" to the second sentence to make it clear that the Tribe also has the right to seek an appropriate court order to change points of diversion, place, means, manner or purpose of use.

The Tribe's proposal regarding the Sierra Valley right also is based on the language of Article VI of the Compact.

The Tribe's position regarding the additional Pyramid Lake allocation is that its right to this remaining "unappropriated" water, i.e. the Truckee River water to which no perfected rights have attached and which currently flows into Pyramid Lake, must be vested in the Tribe for the benefit of the Pyramid Lake fishery under federal law. From the Tribe's standpoint, this is the _quid pro quo_ for the relinquishment of the Tribe's claims to some of the remaining "unappropriated" water to California and Nevada without which the Interstate Allocations would not be possible.

The Tribe's claimed right to the remaining "unappropriated" waters of the Truckee River is involved in two pending lawsuits against the States of California and Nevada. In one of those suits, the United States District Court in California has ruled that the Tribe's claimed right under federal law to the remaining "unappropriated" water is not barred by res judicata. (The Tribe will furnish the Subcommittee with a copy of this decision.) The Tribe will not agree to dismiss these pending cases unless S. 1554 includes a provision setting aside and reserving those waters for the benefit of the Pyramid Lake fishery to be held in trust by the United States for the Pyramid Lake Paiute Tribe.

i. The following new sections should be added to Title I:

FORFEITURE OR ABANDONMENT.-The forfeiture for nonuse or abandonment of water rights under the applicable law of each State shall not affect the allocations to each State made by this Title, nor shall the provisions of this Title affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with state law.

INTERSTATE TRANSFERS.-

(a) INTERSTATE AND INTRABASIN TRANSFERS.-Nothing contained herein shall prevent interstate transfers of water or water rights by the holders thereof within and between the Truckee and Carson River Basins; provided, that each such transfer shall comply with all state laws applicable to transfer of water or water rights, including, but not limited to state laws, regulating change in point of diversion, place of use, and purpose of use of water. Diversion and use of water so transferred shall be charged to the allocation of the State from which such water or water rights are transferred.

(b) CRITERIA AND PROCEDURES REGULATING INTERSTATE AND INTRABASIN TRANSFERS.-Each State may establish reasonable and non-discriminatory criteria and procedures to regulate interstate transfers pursuant to subsection (a).

USE OF WATER BY THE UNITED STATES.-The use of water by the United States of America or by any of its agencies, or instrumentalities or by Indian tribes shall be charged to the allocation of the State wherein the use is made except as otherwise provided in Section 107 of this Act.

COURT DECREES.-Nothing in this Title shall be construed as modifying or terminating any court decree, or the jurisdiction of any court, or as affecting the applicability of state law and procedures to the water allocated hereunder.

PLACE OF USE TO DETERMINE ALLOCATION.-Water diverted or extracted in one state for use in the other shall be charged to the allocation under this Title of the State in which the water is used, except as otherwise provided in section ____ of this Act.

Explanations. California and Nevada have proposed provisions addressing these subjects. The Tribe's proposals are somewhat different. The section on forfeiture or abandonment should specify that state laws are not affected by this title. The interstate transfer provision should not discriminate against, or impose additional burdens on, interstate transfers as opposed to intrastate transfers. In other words, inter and intra state transfers should be governed by the same criteria.

3.a. A new section should be added to Title II which describing the subjects which may be addressed in the Operating Agreement. The Tribe suggests the following language:

OPERATING AGREEMENT

The Operating Agreement may include provisions addressing the following subjects:

(1) the means of assuring compliance with the provisions of this Act and its associated agreements including the nature of the administrative body or bodies to be charged with insuring compliance and the procedures to govern the decision-making of that administrative body;

(2) criteria to govern the water which will be available to satisfy California's allocation of surface water in the Truckee River Basin;

(3) the design and location of the wells which may be drilled in the California portion of the Truckee River Basin;

(4) criteria to govern the development and administration of a plan of operation of the Truckee River system and for the administration of water use entitlements in accordance with all applicable laws, decrees, regulations and the provisions of this Act;

(5) procedures for resolving disputes;

(6) the consequences in the event that any provisions of the Preliminary Settlement Agreement cannot be fulfilled for reasons that are beyond the control of the parties thereto;

(7) the operation of the federal reservoirs in the Truckee River system to fulfill the terms and conditions of the Preliminary Settlement Agreement;

(8) the operation of the federal reservoirs in the Truckee

River system to satisfy all beneficial uses including, but not limited to, recreation, environmental and instream flow benefits throughout the Truckee River system;

(9) the circumstances under which water stored in Lake Tahoe pursuant to the Preliminary Settlement Agreement may be retrieved by gravity after Lake Tahoe has fallen below and then rises above its natural rim and the criteria governing any such retrievals;

(10) the construction and operation of an overflow weir at Lake Tahoe;

(11) the circumstances, if any, under which water maybe pumped from below the natural rim of Lake Tahoe and the criteria governing any such pumping; and

(12) the criteria governing exchanges between and among all reservoirs on the Truckee River system.

Explanation. S. 1554 should contain broad authorization for the parties to address in the Operating Agreement every conceivable subject which might be necessary to implement and administer the settlement and all of the various agreements. Needless to say, the parties subsequently could decide that the Operating Agreement should not include one or more of those subjects.

b. Section 201(a)(4) should be deleted because it overlaps and is somewhat inconsistent with the provisions of section 602(f). The language of section 602(f) is taken directly from the Preliminary Settlement Agreement and also is included in the 1989 law enacted by the Nevada legislature which provides for the implementation of the settlement.

4. The Tribe supports certain changes proposed by the Wetlands Coalition to Title III of S. 1554. The Tribe would support a revision to section 301(b)(1) which would make it more flexible as suggested by the Wetlands Coalition, The Nature Conservancy and the Environmental Defense Fund. The Tribe believes that any such revision should state, among other things, that the wetlands purchase program

> shall be consistent with, and shall not impair or impede, the cui-ui and Lahontan cutthroat trout recovery plans developed and implemented pursuant to section 402 of this Act.

b. The Tribe agrees with the Wetlands Coalition's proposed amendment to section 301(b)(3) as set forth in the enclosure to its November 12, 1989 letter to Senator Bradley provided that the phrases "the lawful diversion objectives of" and "in effect at the time of such purchase" are deleted.

c. The Tribe supports the authorization of additional appropriations for the wetlands purchase program in excess of the $16 million currently authorized in S. 1554.

5. The Tribe proposes the following modifications to Title

IV:

a. The word "mitigation" should be added to the heading of Title IV because the measures authorized in Title IV are required to compensate for the adverse impacts of the Newlands and Cypsut Engineers' projects on the Pyramid Lake fishery.

b. The following sentence should be added to section 401(a):

> The additional inflows to Pyramid Lake resulting from the cessation of the agricultural outlease program shall compensate for any reductions in those inflows which may be attributable to the allocations to California or Nevada in Title I or to the waivers in sections 3 and 21 of the Preliminary Settlement Agreement.

Explanation. As explained above, section 401 is inextricably linked to Titles I and II. It is the quid pro quo for the relinquishment of the Tribe's claimed rights without which the Title I Interstate Allocation and the Title II Preliminary Settlement Agreement would not be possible.

c. The first sentence of section 401(a) should be changed to require that the alternative program be developed and implemented within 2 years after the date of the passage of the

Act. There is no justification for delaying this program until all of the other preconditions are satisfied. The use of water for the agricultural outlease program is not necessary to the Navy's mission and is needed immediately for the Pyramid Lake fishery.

d. The following new provisions should be added as sections 402 and 403 (existing section 402 should be changed to section 404):

SEC. 402. LOWER TRUCKEE RIVER REHABILITATION PROJECT.

(a) IN GENERAL.-The Secretary of the Army, in consultation with and with the assistance of the Tribe and the Secretary, is authorized and directed to develop and implement a plan for a project to rehabilitate the Lower Truckee River which shall be designed to--

(1) restore the riparian habitat and vegetative cover;

(2) stabilize the course of the Lower Truckee River and minimize erosion damage;

(3) provide the best possible spawning habitat for the cui-ui; and

(4) provide improved spawning habitat for the Lahontan cutthroat trout to the extent deemed feasible.

(b) AUTHORIZATION OF APPROPRIATIONS.- There are hereby authorized to be appropriated such funds as are necessary to plan and implement the Lower Truckee River Rehabilitation Project described in subsection (a).

SEC. 403. DELTA ACCESS FACILITIES.

(a) IN GENERAL.-The Secretary of the Army, in consultation with and with the assistance of the Tribe and the Secretary, is authorized and directed to develop and implement a plan for facilities to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of Lower Truckee River to obtain access to their upstream spawning grounds.

(b) AUTHORIZATION OF APPROPRIATIONS.-There are hereby authorized to be appropriated such funds as are necessary to plan and construct the Delta Access Facilities described in subsection (a).

In addition, subsection (b) of the recovery plan provision (currently section 402(b)) should be revised to require that the cui-ui and trout recovery plans "take account of, include, and make the plans subject to and consistent with the Lower Truckee Rehabilitation Project and the Delta Access Facilities as described in sections 402 and 403."

Explanation. Lower river restoration and significantly improved delta access are essential to mitigate the extremely harmful impacts of the Newlands Project and the Truckee Meadows Flood Control Project on the Pyramid Lake fishery. The President's 1991 Budget includes funding for the Corps of Engineers to proceed with planning these two projects.

e. The following subsection should be added to the recovery plan section as subsection (c):

AUTHORIZATION OF APPROPRIATIONS.-There are hereby authorized to be appropriated such funds as are necessary to develop and implement the recovery plans developed pursuant to this section.

6. **The Tribe proposes the following amendments to Title VI:**

a. Change section 601(a)n to read as follows:

(a) CLAIMS WHICH MUST BE SETTLED.-This Act is contingent upon dismissed with prejudice or other appropriate final disposition of the following matters:

(1) All claims relating to the operation of Lake Tahoe Dam presented in Pyramid Lake Paiute Tribe of Indians v. Lujan, Civil No. S-87-1281 LKK in the United States District Court for the Eastern District of California, except those claims relating to the operation of Lake Tahoe Dam for the benefit of the Newlands Reclamation Project;

(2) All claims presented in United States v. Truckee-Carson Irrigation District, Civil No. R-2987 RCB in the United States District Court for the District of Nevada, except for the claims presented in the Tribe's proposed amended complaint;

(3) All claims, obligations and defenses related to water for wetlands in the Lahontan Valley and the Fernley Sink presented in Pyramid Lake Paiute Tribe of Indians v. Lujan, Civil No. R-85-197 BRT in the United States District Court for the District of

Nevada;

(4) The withdrawal of all pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission;

(5) All claims presented in Pyramid Lake Paiute Indian Tribe v. Department of the Navy, Civil No. R-86-115 BRT in the United States District Court for the District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(6) All claims presented in Pyramid Lake Paiute Tribe of Indians v. California, Civil No. S-81-378 RAR in the United States District Court for the Eastern District of California.

b. Section 601(b) should be deleted because it is meaningless. All matters settled by S. 1554 will not be litigated by definition. But it is possible that parties may disagree about what was or was not settled and (unfortunately) it is impossible to prevent those kinds of disagreements.

c. Section 601(c) should be amended as recommended by the Wetlands Coalition in the attachment to its November 12, 1989 letter to Senator Bradley.

d. Section 602(a) should be amended by adding the words, "including the beds and banks of Pyramid Lake and of the Truckee River within the exterior boundaries of the Pyramid Lake Indian

Reservation" after the word "Reservation" on line 12 of page 22 of S. 1554.

e. Section 602(b) should be amended by adding the phrase, "subject to the provisions of section 602(__)" at the beginning of the provision. The reference is to the Tribe's proposal regarding Anaho Island described below. In addition, the phrase "all forms of recreation" should be added after the word "fishing" on line 15 of page 22 of S. 1554.

f. Section 602(e) should be deleted and replaced with the following two provisions:

> The right held by the United States to store the waters of the Little Truckee River in Stampede Reservoir shall be held permanently held by the United States in trust for the sole use and benefit of the Tribe and shall be utilized for the benefit of the Pyramid Lake fishery. The use of Stampede Dam and Reservoir for this purpose shall be non-reimbursable.
>
> The right held by the United States to store in Prosser Creek Reservoir the portion of the waters of Prosser Creek which are in excess of the amount required to carry out the Tahoe-Prosser Exchange shall be permanently held by the United States in trust for the sole use and benefit of the Tribe and shall be utilized for the benefit of the Pyramid Lake fishery. The use of Prosser Creek Dam and Reservoir for this purpose shall be non-reimbursable.

Explanation. These two provisions are essential. All of the studies and assessments which led to the Interstate Allocation agreement and the Preliminary Settlement Agreement were based on the assumption that the yield from Stampede and Prosser Creek Reservoirs would be devoted to the Pyramid Lake fishery. These provisions are also intended to provide partial compensation to the Tribe for the partial loss of its Winters Doctrine right to sufficient water for the maintenance and preservation of the Pyramid Lake fishery. Finally, the Preliminary Settlement Agreement satisfies the future M&I water requirements of the Sierra Pacific Power Company so the water from Stampede and Prosser Creek Reservoirs is not needed for that purpose.

g. The following additional provisions should be added to Section 602:

1. Congress finds that this Act and its associated agreements provide substantial benefits to the cui-ui and the Lahontan cutthroat trout in the Truckee River/Pyramid Lake ecosystem. No single provision of this Act shall form the basis for additional claims of water from any water right holders by the Tribe under the Endangered Species Act.

Explanation. The States of California and Nevada as well as the Sierra Pacific Power Company and the Truckee-Carson Irrigation District have sought an assurance from the Tribe that the water allocations to the States under Title I would not serve as a basis for any claims to additional water for the Pyramid Lake fishery. This provision provides that assurance.

Federal officials shall be responsible for operating and maintaining the following federal facilities: Lake Tahoe Dam, Stampede Dam, Prosser Creek Dam, Derby Dam and Lahontan Dam but such operation and maintenance shall not alter or affect the responsibilities of the Federal Water Master. The Truckee-Carson Irrigation District shall reimburse the United States for the cost of operating and maintaining Derby Dam and Lahontan Dam.

Explanation. These essential federal facilities should be operated by a neutral governmental entity rather than by an organization with a single interest which might come into conflict with other interests. Newlands Project water users should reimburse the full cost of operating and maintaining Derby and Lahontan Dam because they receive 100 percent of the benefits of those facilities. Under S.1554, the other facilities would be used for multi-purpose and partially non-reimbursable purposes.

3. Notwithstanding any other provision of law, all transfers of Newlands Project water rights shall be governed exclusively by the laws of the State of Nevada.

Explanation. The purpose of this addition is to eliminate any constraints on Newlands Project transfers which may exist under federal law.

> 4. Nothing in this Act shall be deemed to modify, conflict with, or to create any exemptions from, any otherwise applicable federal environmental laws including, but not limited to, the Endangered Species Act, the National Environmental Policy Act, or the Migratory Bird Treaty Act.

Explanation. The Wetlands Coalition has sought the inclusion of a provision of this kind to negate any possible inference which might arise from other provisions of S. 1554.

> 5. Anaho Island in its entirety is part of the Pyramid Lake Indian Reservation. With the consent of the Pyramid Lake Paiute Tribe evidenced by a duly enacted resolution of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall be managed and administered as a wildlife refuge and bird sanctuary as a component of the National Wildlife Refuge System. The Secretary, acting through the Fish and Wildlife Service, is authorized to enter into cooperative agreements with the Tribe regarding the management and administration of the Anaho Island National Wildlife Refuge.

Explanation. There are several abstract questions which could be raised regarding the status of Anaho Island. As a practical matter, there has been an excellent cooperative relationship between the Tribe and the U.S. Fish and Wildlife Service and no actual problems have arisen.

The Tribe's proposal is intended to clarify the legal status of the Anaho Island and avoid the potential for future conflicts. This goal is accomplished without commenting one way or the other on the existing abstract or theoretical issues.

6. Notwithstanding any other provision of law, all federal agencies and departments shall terminate all subsidies to the Newlands Project and all agricultural subsidies to all farmers within the Newlands Project. Such subsidies shall include, but are not limited to, revenues from federally owned hydroelectric facilities, rent free use of federal lands, lease revenue from federal lands and custody over federal lands.

Explanation. There is no justification for continuing federal subsidies to a project whose operations result in dead and deformed birds, keeping an Indian tribe impoverished and keeping an endangered species and genus on the brink of extinction. Moreover, eliminating these subsidies will reduce the market price of water rights acquired for the wetlands pursuant to Title III and will facilitate the development and implementation of the Title IV recovery plans.

h. Title I should be added to the list of titles in section 603 (page 23 of S. 1554 at line 23). In addition, the titles listed in the first sentence of section 603 should not take effect until a stated amount of the funds required to implement the Title IV recovery plans are appropriated. The Tribe will work with the Committee and with Senator Reid to arrive at a mutually agreeable figure.

In conclusion, I want to express my Tribe's hope that in the near future we will regain the water we need to restore our fisheries, restore our economy, restore our traditions and regain our strength as a people. Our water, fisheries and people are our livelihood and our way of life. We will struggle to recovery and maintain what is ours and in the many generations left on this earth you can be guaranteed one thing, we'll still be here.

Thank you for the opportunity of appearing before you today and of presenting this testimony.

Senator **Bradley**. What is your most important amendment?

Mr. **Ely**. Our most important amendment at this point is the amendment to appropriate the unappropriated water of the Truckee River system. As I stated earlier, all the titles are interrelated, and they are interrelated to the Pyramid Lake Tribe more than anything, because we are at the bottom of the system. We get all of the water after it is used by everybody else. We have to make sure that that water that is now unappropriated water is appropriated to Pyramid Lake.

Senator **Bradley**. Could you tell me how many people come out to the lake to fish?

Mr. **Ely**. We have estimates, and it varies from year to year, but we have about 35,000 fishermen who come out to the lake to fish each year.

Senator **Bradley**. Is it more than just people from Reno and Sparks?

Mr. **Ely**. Yes. We have people from Reno and Sparks, of course, but we have people flying in from all over the United States, as well as international visitors who come to Pyramid Lake to fish, as well as individuals who come just to Pyramid Lake to enjoy the fact that it is pristine and want to be by the lake because of its history.

Senator **Bradley**. So you have people from all over?

Mr. **Ely**. All over the world, yes.

Senator **Bradley**. Section 602(b) gives the tribe jurisdiction over hunting and fishing within the reservation boundaries. Does that include the Anaho National Wildlife Refuge?

Mr. **Ely**. Yes, it does. And there was an issue raised earlier about Anaho Island when this all came together, and I am sure that you understand the history behind that. The reservation was in fact set aside in 1859 and established a few years after that. By executive order Anaho Island was established in early 1900s and set aside as a refuge. We feel that we have an amendment in our testimony that addresses that problem, whereby the tribe would essentially have Anaho Island as part of the reservation, but we would have an agreement between the United States where we would actually sit down and administrate that through memorandum of agreement. I need to note that we have been caretakers of Anahoe Island for over 10,000 years.

Senator **Bradley**. Is it your view that migratory bird treaty and the other Federal wildlife laws would apply?

Mr. **Ely**. Yes, to Anaho Island, yes.

Senator **Bradley**. Do you really expect Congress to sign a $75 million blank check?

Mr. **Ely**. Yes, we do. First off, Congress has done so in the past, and I have some examples, if I may give them.

Senator **Bradley**. As you are looking for the other examples, do you mind sharing with the subcommittee how you propose to spend the economic development funds?

Mr. **Ely**. Well, first, while I am halfway lost here trying to find my paper——

Senator **Bradley**. Why don't you let your trusted lawyer there, Mr. Pelcyger, find it.

Mr. **Ely**. The trusted lawyer gave it to me, unfortunately. But our trusted lawyer is from Colorado and we do know that they fumble from time to time. There have been four recent water settlement acts, and in those recent water settlement acts they provide for economic development. San Luis Rey, for example, provided for $30 million. The Salt River Pima Maricopa settlement provided for $66,470,000. The Colorado Ute settlement act provided for $360 million. The Puyallup provided $81,000,500. So we feel that it is certainly within reasonable means to expect $75 million as part of the settlement.

We expect to spend this money, first off, you must understand the economy of our tribe. For 10,000 years we were a very fat, prosperous tribe. We had everything that we ever needed and everything that we ever wanted, and 150 years ago, beginning with our discovery from John C. Fremont, we started to go downhill to a point where we are today of almost totally dependent upon Federal funds. We have an unemployment rate of 47 percent. So we are not happy with our situation. We would like to rebuild our economy, again regain our dignity, put our people back to work, and be self-sufficient.

We plan on spending this money in several different areas. Our primary area will be in the area of tourism surrounding the fishery and the lake, marina development, hotel development, restaurant development, this type of thing, and also other facilities and accommodations for individuals who use the lake. We don't think that this is just beneficial for us, we feel that this is beneficial for the whole region.

Let me give you an example. Right now the Pyramid Lake Tribe receives about $350,000 a year out of the sale of fishing permits. Yet, because of that fishing, the regional economy benefits to the tune of about $20 million. So we feel that if we are able to enhance our fishery and enhance the tourism aspect of the reservation, we will gain as well as enhance the region.

We also expect to spend some of this in the area of geothermal power. We have geothermal resources at the northern end of the lake that we would like to take a close look at. As a matter of fact, we have already started to plan for.

We are also looking at starting some light industry in the area. As you know, the Reno-Sparks area, as well as the Fernley area, are starting to develop an economy based on light industry. We would like to join in that development and not only provide jobs for our people, but provide jobs for the area's people. So we think that we have ways to spend this money. We feel that we will do it in a way that is compatible with our environment, and would be compatible to bringing back our self esteem and our dignity as we once had.

Senator **Bradley**. You know, one of the purposes of the act is not just to mitigate, but to actually recover the fisheries. Do you see any of the development that you have described being in conflict with that?

Mr. **Ely**. No, Sir, we don't. As a matter of fact, we have been given proposal after proposal. Sometimes we joke about the fact that we could probably build a wall with the proposals we have received from individuals who have exploitive type ventures to be based at the lake. Our lake is fairly pristine as it is right now. That is no accident. Our tribal councils and our leaders before us have kept it that way. We will remain compatible with our environment as we plan for our economy.

Senator BRADLEY. You have been a real leader on this issue, and I think your testimony today has been extremely helpful to the subcommittee. Your comments about the Interior Department are taken. I thank you for coming. Senator Wallop.

Senator WALLOP. Mr. Chairman, I might say that you have taken the comments on the Interior by Mr. Ely. I frankly resent them. I don't think it is in the interest of trying to get the settlement that you or anyone else wishes and I don't think it is an appropriate or fair way of travelling.

I also might just mention that you misrepresented the Colorado Ute settlement, because that included the cost of building the Animas-LaPlata project, and it included the contribution of the State of Colorado, which, as you may recall badly wanted to get that done for their own irrigation needs.

It is not hard to understand why you would like this. You get $75 million. But what is in it for the Fallon Paiute? Does it settle all their claims? Does it settle all claims on the Truckee River, this bill?

Mr. ELY. No, this bill does not settle all the claims on the Truckee River. And I can't, of course, speak for the Fallon Tribe, but it is my understanding that in the bill there is language and provisions that make sure that the Fallon Tribe is not hurt by this bill, and that they will be able to continue to go forward and attempt to establish their claims.

Senator WALLOP. Well, I guess I may have been talking to different Fallon Tribe members than perhaps you have. We will hear the rest of that when they testify. But I must say I don't see what is in it for the Federal Government, and I don't see what is in it for the Newlands project, and I don't see what's in it for them if it doesn't settle all the claims. In fact, that was the fundamental purpose of having legislation in the first place. It may not seem that to you, with $75 million poised above your plate, but for the rest of the people in there who are facing a major tax consequence, the Churchill County residents and others it does. Unless this settles all those claims, I don't really see why anyone else should proceed with it.

Mr. ELY. Well, my understanding is that, as was mentioned this morning, that we are going to have an opportunity to attempt to settle some of those other issues. As we started out this process we started out with the understanding, or at least the intent, of trying to settle all of these issues. Unfortunately not all who came to the table were willing to settle the issues. My understanding is we will give it another 90 days to attempt to settle those issues. But I have to be realistic here and understand that if we can't get everything we must get something, and there is a lot of other interest on the river that can be helped by this bill. And I think it is very important that we proceed and benefit those interests, and maybe at a later date, if necessary, try to solve the other issues.

Senator **WALLOP**. In your opinion, does the bill assure that the water purchases will permanently enure to the benefit of the Lahontan Valley wetlands?

Mr. **ELY**. Yes.

Senator **WALLOP**. There may be some question over the word permanent. I think there is some worry in their minds that it may not.

Senator **BRADLEY**. Whose minds?

Senator **WALLOP**. The Lahontan Paiutes. That is one of the reasons why I focus on whether it settles the claims for water on the Truckee River, because we'll be just back here again with another major contribution to be made to you or to the other tribe, or the irrigators in the project, or the city of Reno, or somebody along the way. It is my hope that when we do this, that we do find all of this problem solved.

We worked before on Pyramid Lake here when I was Chairman of the subcommittee, and I am strongly in favor of getting a settlement, something that works for everybody. But I hope that you focus on the word everybody and the word permanent.

Mr. **ELY**. Well, I assure you, Mr. Senator, that we are trying everything that we can to have an overall comprehensive settlement. We have no intention of trying to reopen this thing, to make anything less than permanent. It has been a long hard struggle for us. We are, quite frankly, quite tired.

We want to get on with the business of benefitting each other and living as neighbors as opposed to enemies. I don't know if anyone could quite understand the toll it has taken on my people to be adversaries for 150 years. We don't like the situation. We would like to put together a bill that would benefit as many parties as possible to solve this problem.

Senator **WALLOP**. Mr. Chairman, we have a vote. Would it be permissible for me to offer some questions for the record?

Senator **BRADLEY**. Absolutely. Your questions to the present witness or to other witnesses?

Senator **WALLOP**. And to other witnesses.

Senator **BRADLEY**. Sure. Absolutely.

Senator **WALLOP**. Thank you.

Senator **BRADLEY**. Mr. Ely, do you have any other thoughts for the subcommittee?

Mr. **ELY**. My final thoughts really are that we view this as a very historic day. It has been a long time coming, we have had a lot of work behind us, we have a lot of work ahead of us. I would ask that we continue to work forward positively, and that if we continue to sit down as reasonable people we could have solutions to some of the problems that have been brought up. We need to go forward and solve these and have this bill passed.

Senator **BRADLEY**. One of the earlier panels called attention to the fact that your term of office expires at the end of this year. Is that a relevant fact for the subcommittee, as the speaker stated?

Mr. **ELY**. I don't believe it is a relevant fact. Our tribe has a little more continuity than that. We are operating off of a referendum that was given to us by the people who mandate us to settle and gave us parameters. If I am not here in 11 months, there will certainly be another chairman who will be here carrying the torch as

I did, and will continue to push forward until we have a settlement.

Senator **Bradley**. Mr. Ely, thank you very much for your testimony today, and for coming all this way. Some day I want to see Pyramid Lake.

Mr. **Ely**. Thank you, Mr. Chairman.

Senator **Bradley**. We now have a vote, and I am going to exercise the prerogative of the chair to recess before we get to the Lahontan Valley wetlands, Fallon Paiute-Shoshone Tribe, and the Newlands project panels. I think, to be realistic, that we should recess until 3:00, so that we can get through these votes, and then all be back here at 3:00 to continue. And my hope and expectation is that we should finish this by 4:00 at the latest, so we want to have one more hour on this. So, thank you. What we will do is recess now until 3:00.

[Recess]

Senator **Bradley**. The subcommittee will come to order. Let me again express my appreciation to the witnesses for putting up with the Senate schedule.

The panel before us now are Lahontan Valley wetland and waterfowl experts. We have David Yardas, Analyst, Environmental Defense Fund; Tina Nappe, Coordinator, Lahontan Valley Wetlands Coalition; and David Harrison, who is on the Board of Governors of The Nature Conservancy. Welcome to the subcommittee.

The way we are trying to run this is to take five minutes, make your points, and then if there are questions I will ask them. We will try to get as much information as we can in a short period of time.

Mr. Yardas.

STATEMENT OF DAVID R. YARDAS, RESOURCE ANALYST, ENVIRONMENTAL DEFENSE FUND

Mr. **Yardas**. Thank you.

Senator **Bradley**. In no order of importance, you understand, just left to right.

Mr. **Yardas**. Thank you, Mr. Chairman, and members of the subcommittee. Good afternoon. I am David Yardas, an analyst with the Environmental Defense Fund's west coast regional office in Oakland, California, and a staff principal for EDF's rural economy and environment project in the Truckee and Carson River basins. I am particularly pleased to be on this particular panel because I am a founding member of the Lahontan Valley Wetlands Coalition, and I also have the good fortune to work closely with the Nature Conservancy to begin to implement an orderly reallocation of federally developed water within the Truckee and Carson River basins.

Since time is limited, I will try to just hit a couple of key points of my written testimony which I submitted earlier. And I would also like at this time to ask if I could introduce the testimony of the National Audubon Society and the Wilderness Society.

Senator **Bradley**. All testimony is welcome in the subcommittee, and those two shall be submitted to the record in the same place as the Department of the Interior.

Mr. YARDAS. As representative of EDF, I guess I want to clarify one thing up front, and that is that our concerns really are divided equally between the wetlands of the Lahontan Valley and Pyramid Lake, the Pyramid Lake ecosystem and fishery. We came into this several years ago trying to dispel what seemed to be an ongoing myth or a perverse internal environmental competition between Pyramid Lake and Lahontan Valley wetlands, one that we felt could be addressed in other ways. We are pleased that S. 1554 contains a provision that provides for water rights acquisitions for the wetlands which can begin to obviate the need for that sort of competition.

It is particularly pleasing that S. 1554 does this in a way that respects, and we think even advances, individual property rights, and with minor amendments, community values. One of the prospective bonus prizes is the resolution of irrigation induced water quality problems. You spoke earlier today, Mr. Chairman, of the Kesterson experience, and it has always been our belief that it made more sense to act in a preventive rather than a reactive action. And today I believe it is safe to say that the problems that have been observed in the Lahontan Valley related to irrigation induced drainage problems could make the $50 million to $100 million Kesterson experience pale in comparison if something isn't done, and donesoon.

Second, I think that S. 1554 provides a quintessential example, if you will, of the new era in western water management. One which accommodates a diverse array of Federal, State, tribal, urban, agricultural and environmental needs, and does this by making explicit links between endangered species protection and enhanced urban sector supplies through a partnership of Federal, State, and private sector acquisition efforts grounded in respect for the values inherent in the larger community and ecosystem, through habitat restoration efforts, which will help to minimize additional environmental demands on limited water supplies, and through additional provisions which will promote the recovery of species, protection of ecosystems, and the equitable resolution of long neglected native American claims.

Accordingly, this bill provides the opportunity for a clear demonstration of the administration's commitment to a professed policy of no net loss for wetlands, support for the Department of the Interior's lofty principles on facilitating voluntary water transactions, and to a concrete demonstration of the bold and visionary pronouncements of the new Bureau of Reclamation, and ultimately to the resolution of nearly 100 years of conflict on these heavily litigated waters.

We recognize that work is not finished on S. 1554, and our detailed comments provide a number of specific suggestions that we hope will make it a stronger and more effective bill. In any case, Senator Reid and his staff, and all the negotiating parties, deserve considerable credit for their commitment to developing the foundation, the framework and much of the substance upon which a true inter-basin settlement can and should be based. We look forward to working with the committee, with Senator Reid, and with others in the Congress to help realize this bill's considerable promise.

[The prepared statement of Mr. Yardas follows:]

ENVIRONMENTAL DEFENSE FUND

Rockridge Market Hall
5655 College Avenue
Oakland, CA 94618
(415) 658-8008

Statement of

David R. Yardas
Environmental Defense Fund

on the

**Truckee-Carson-Pyramid Lake
Water Rights Settlement Act**

(S. 1554)

before the

Subcommittee on Water and Power
Energy and Natural Resources Committee
United States Senate

February 6, 1990

Mr. Chairman and members of the Subcommittee: I am David Yardas, Resource Analyst with the Environmental Defense Fund's West Coast Regional Office in Oakland, California. During the past four years, I have served as the staff principal for project work under EDF's Rural Economy and Environment Program in Nevada's Truckee and Carson River basins, one of eight such projects in six western states. In this capacity, I have helped to develop and promote numerous mechanisms for the orderly reallocation of federally-developed water supplies at the Newlands Irrigation Project, among the first of our nation's federal reclamation efforts and still the largest single diverter of water in the Truckee and Carson River basins. Here, as elsewhere in the West, enhanced water-transfer opportunities involving historic irrigation uses and federally-developed water remain critical to the equitable resolution of unresolved Native American claims, the protection of rural drinking water supplies, and the eventual fulfillment of burgeoning urban-sector demands. Enhanced reallocation opportunities also will be critical to the avoidance of increased demands on the basins' severely-overtaxed instream resources; to the long-term protection and enhancement of wetlands critical to the continent's beleaguered migratory waterfowl populations; and to the avoidance of "painful environmental choices" between such unique and fragile ecosystems as Pyramid Lake and the Lahontan Valley wetlands. For each of these reasons, I am grateful for the opportunity to provide these comments on behalf of the Environmental Defense Fund regarding S. 1554, the Truckee-Carson-Pyramid Lake Settlement Act.

The Bill As Introduced Without question, S. 1554 represents real hope for Pyramid Lake and the Lahontan Valley wetlands alike, and reflects in many ways the "new regime" in western water management that will be needed if a diverse array of federal, state, tribal, urban, agricultural, and environmental concerns are to be addressed and equitably resolved. As introduced on August 3, 1989, for example, S. 1554 provides for:

o Implementation of an agreement between the Pyramid Lake Paiute Tribe and the Sierra Pacific Power Company which will reduce urban sector demands, enhance drought-year supplies, and increase normal-year spawning flows for the Pyramid Lake fishery through a combination of reservoir management improvements and privately-financed conservation investments (Title II):

o The purchase of water rights, from willing sellers, for transfer to and use within the Stillwater and other Lahontan Valley wetlands (Title III), thus complementing a variety of state and private-sector initiatives designed to protect this vital inland link on the Pacific Flyway;

o Development and implementation of a water conservation program at the Fallon Naval Air Station which will help to reduce Truckee River diversions and thus help to promote the conservation and recovery of Pyramid Lake's threatened and endangered fish species (Title IV).

These and other provisions of S. 1554 reflect very clearly more than two years of effort by Senator Reid, his staff, and each of the negotiating parties to develop creative and meaningful alternatives to the basins' longstanding tradition of litigation and conflict. They also support, in specific terms, the President's "no net loss" objectives for the protection of wetlands; the Department of the Interior's principles with regard to the facilitation of voluntary water transfers; and the "bold and visionary" goals of the "new" Bureau of Reclamation concerning improved water-supply management, water quality, and environmental protection and restoration.

Suggested Amendments As reflected in our more detailed comments previously submitted by letter of December 17, 1989 (and incorporated here by reference), several modifications or enhancements to S. 1554 will help to ensure that the management, acquisition, and conservation alternatives currently authorized will proceed in an orderly and community-conscious manner, and thus ensure that the Act's broader goals and objectives can be achieved. These include:

o Additional funds for wetlands water-rights acquisitions (Title III) in order to (1) fully offset the adverse effects of reduced Project diversions due to implementation of the final Operating Criteria and Procedures (OCAP) and the Navy outlease alternative (Title IV); (2) offset the adverse effects of reported fuel spills and ordnance damage associated with Fallon Naval Air Station operations; and (3) help to leverage non-federal contributions in support of long-term wetlands management objectives, the broader goals of the North American Waterfowl Management Plan, and the President's 1991 budget submission to Congress;

o Revised "eligibility criteria" (Title III) or equivalent mechanisms to better reflect year-to-year changes in historically irrigated acreage while continuing to ensure that water-rights transfers to the wetlands will neither increase Truckee River diversions nor conflict with the U.S. Fish and Wildlife Service's affirmative responsibilities under the Endangered Species Act;

o Additional authorities (Title III) to allow for (1) the reimbursement of Truckee Carson Irrigation District operation and maintenance assessments through lump-sum payments and/or credits against current and future Project repayment obligations; and (2) annual and/or lump-sum reimbursements for forgone property tax revenues and land rehabilitation costs;

o A study of rural domestic water-supply alternatives in the Newlands Project area (Title III), including the prospective transfer and use of Project water rights for municipal, industrial, residential, and domestic water-supply purposes;

o Specific funding for implementation of the endangered species recovery plan efforts listed under Title IV, including lower River rehabilitation and improved Delta and upriver access (unless such efforts are authorized and funded under "companion" legislation); and

o Additional protective provisions (Title VI) to ensure that each of the provisions of this Act comply with otherwise applicable federal environmental laws.

Our best estimates indicate that between $12 and $20 million in additional federal funds will be needed to meet the President's "no net loss" objectives for wetlands, given the primary habitat losses associated with implementation of the final OCAP and taking into account the additional Title III authorities suggested above. We recommend, in addition, that a portion of these funds (up to $3 million) be provided by the U.S. Navy, with the balance to be provided on a cost-shared basis as a means of further "leveraging" prospective state and private-sector contributions. Attached to these comments are specific suggestions regarding each of the recommendations outlined above.

Related Concerns In addition to these suggestions, we would like to comment briefly on four closely-related issues: the unresolved status of the basins' refuges, wetlands and wildlife areas; the unsatisfied rights and claims of the Fallon Paiute-Shoshone Tribes; the prospective inclusion of the Truckee-Carson Irrigation District as a direct beneficiary under this Act; and the potentially adverse effects of water-rights purchases on community and economic interests in the Newlands Project area.

Wildlife Refuges Section 302 requires the Secretary of the Interior to provide recommendations to the Congress concerning the creation of a permanent National Wildlife Refuge within existing wildlife use areas in the Lahontan Valley. At a minimum, this mandate should be extended to include the Stillwater WMA, Carson Lake, and the Fernley WMA, with cooperative management responsibilities limited to the U.S. Fish and Wildlife Service and the Nevada Department of Wildlife. This mandate also leaves unresolved, however, the status of relicted lands which surround, but are not formally a part of, the Anaho Island National Wildlife Refuge, particularly in the face of Section 602 (which confirms certain rights in the Pyramid Lake Tribe within the boundaries of the Pyramid Lake Indian Reservation). Recognizing that this uncertainty creates an opportunity to bring long-term protection to Anaho Island's breeding colonies in a manner that respects the sovereign rights and interests of the Pyramid Lake Tribe, we recommend that:

o Section 602 be amended to provide for the creation of a permanent wildlife refuge and sanctuary on Anaho Island, including hereafter all lands above waterline, to be administered as part of the National Wildlife Refuge system through cooperative agreements between the Pyramid Lake Tribe and the U.S. Fish and Wildlife Service.

We do not, at this time, have detailed language to offer for these purposes, but are continuing to work closely with the Pyramid Lake Tribe and others to develop amended language that will be acceptable to all concerned.

Fallon Paiute-Shoshone Tribes Section 601(c) requires the Secretary to negotiate diligently with the Fallon Tribe to establish a program for the full and prompt implementation of Public Law 95-337 and/or acceptable alternatives thereto. As discussed in our more detailed comments, these negotiations are long overdue, and at the very least are properly mandated as a component of this Act. (Even better: negotiations should begin immediately, so that a framework for settlement might be included as a separate Title under this Act.) These negotiations must, in any case, include mechanisms to resolve the problems of toxic contamination in the "T-J" drain, and to avoid increased demands on the Truckee River as an indirect consequence of fulfillment of the Fallon Tribe's rights. There are, in this regard, numerous options which might help to resolve each of these concerns, including:

o On-reservation infrastructure improvements, "compensating" land and water rights acquisitions, and the exchange of lands acquired under the wetlands protection provisions of Title III for those presently slated for on-Reservation irrigation development; and

o Other explicit links to the wetlands protection program, including the designation of on-Reservation wetlands as prospective enhancement targets, the execution of cooperative training and management agreements between the Fallon Tribe and the U.S. Fish and Wildlife Service, and the establishment of a scholarship endowment for the training of Tribal members in such disciplines as wildlife biology and wetlands management.

Truckee-Carson Irrigation District A variety of proposals have recently been advanced concerning the inclusion (i.e., re-admission) of TCID as a direct beneficiary of S. 1554. It is our understanding that these proposals include, among other matters, an "across the board" cancellation of outstanding repayment obligations to the United States and the creation of a multi-million dollar "settlement fund" for use by the District. (The latter is based, in part, on $4 million in state-approved funds which would otherwise be available for additional water-rights purchases.) While we support such re-initiated discussions as an important step toward the eventual realization of a lasting and comprehensive inter-basin settlement, it is critically important that renewed negotiations neither impede attainment of this Act's considerable promise, nor overlook the contributions that the District might make in exchange for the benefits extended. We therefore recommend that in the context of renewed negotiations:

- District policies be amended to actively support up to 60,000 acre-feet of Project water-rights acquisitions undertaken on behalf of the Lahontan Valley wetlands and/or Pyramid Lake;

- District assessments be revised to reflect the full costs of Project operation, maintenance and drainage, and assessed according to the quantities of water actually delivered for irrigation purposes;

- Any "across-the-board" debt-forgiveness be accompanied by a waiver of the operation and maintenance reimbursement obligations otherwise incurred by the U.S. Fish and Wildlife Service for water rights acquired under Title III of this Act;

- Revenues which presently accrue to the District in conjunction with federal hydropower facilities at Lahontan Dam be earmarked for use in support of the wildlife objectives established under this Act;

- Grazing outleases within the boundaries of the Stillwater Wildlife Management Area be terminated unless they comport with the U.S. Fish and Wildlife Service's habitat management objectives for Stillwater (in which case remaining outlease revenues should accrue to the Service for benefit of the Valley's wildlife and wetlands);

- Water deliveries to water-righted lands within the Fallon Indian Reservation, as well as those to the wetlands based on acquired water rights, be provided in full every year prior to the satisfaction of any other Project water right; and

- Individual farmers be allowed to "market" such water as may be conserved through reduced on-farm applications, provided that agreements can be reached with regard to maximum headgate deliveries and total Project diversions. (Such authority would, among other benefits, create enhanced income opportunities; establish positive conservation incentives; provide an alternative to land retirement for the voluntary reallocation of existing supplies; and help to reduce contaminated drainage loadings in combination with enhanced freshwater deliveries to the wetlands.)

We recognize, of course, that several of the above suggestions could result in significant revenue losses to the District. To the extent that such losses are not offset by repayment credits or extended federal appropriations, they certainly could be absorbed through increases in existing operation and maintenance charges to remaining water users. Based on current assessment rates, it is our best estimate that the implied "cost of water" following such increases would still amount to less than $15 per acre-foot annually.

Community Effects Numerous concerns have been raised regarding the future viability of the Project's agricultural base, as well as associated community and economic impacts, following implementation of the water-rights purchase program authorized in Title III. In response to these concerns, it should be noted that:

- o Long-term wetlands management objectives, as well as the full mitigation of adverse effects of the OCAP, can be accomplished through acquisitions involving less than one-third of the Project acreage presently under cultivation.
- o The needed acquisition total corresponds to a potential reduction in gross Project sales of significantly less than five percent of gross county product. It would leave intact at least two-thirds of the present-day agricultural base, including (in all likelihood) those farms with the best soil and production capabilities. It would also leave intact approximately $80 million in federal funds which currently are expended in the Newlands Project area each year--a total which exceeds gross Project sales by $50-$60 million.
- o Prospective income losses will be accompanied by a variety of offsetting benefits, including enhanced individual income (particularly in the case of marginal and debt-burdened farms), avoided drainage and treatment costs, avoided litigation expenses, improved conveyance efficiencies, enhanced recreational opportunities, and a healthy, viable wetlands ecosystem that our great-grandchildren might enjoy.
- o Notwithstanding each of these benefits, the recommendations offered above include numerous protective measures to ensure that Project water rights will be acquired and transferred in an orderly and responsible manner, with appropriate compensation to all affected parties.

We also note that water-quality problems throughout the Lahontan Valley (including mercury contamination at Lahontan Reservoir, high arsenic concentrations and co-mingled septic discharges in shallow groundwater supplies, and toxic trace-element concentrations in certain Project drains) already point to the need for alternatives to the current reliance on induced irrigation recharge as a predominant source of domestic water supply or wetlands inflow. In response to these concerns, we have previously suggested that S. 1554 include a study of domestic water-supply alternatives in the Newlands Project area. Notwithstanding the comments offered above, continuing concerns over the wetlands purchase program might best be addressed through an expansion of this initial study to include a review of the socio-economic impacts and benefits of the wetlands purchase program. To this end, we recommend that:

- any such study proceed concurrently with (and in no case preclude) the acquisitions authorized under Title III;
- existing Project and community benefits associated with federal property or expenditures, as well as any settlement funds (or other benefits) that may be extended to TCID or to other community interests under this Act, be taken into account; and
- priority with respect to such settlement funds or benefits be targeted to the resolution of existing water quality concerns.

Federal Commitments and Partnerships S. 1554 provides an unprecedented opportunity to resolve many longstanding conflicts within the Truckee and Carson River basins through improved water-supply management, enhanced water-use efficiency, voluntary water reallocations, and, ultimately, a balanced and equitable re-allocation of the basins' water supplies. Given the composite of outstanding federal obligations to the environments and Native peoples whose interests were ignored when the Newlands Project first was developed, this opportunity will not be realized in the absence of substantial federal commitments on their behalf. Additional federal resources also will be needed if the mistakes of the past are to be avoided in the context of future reallocations of federally-developed water. Yet such resources will add substance and credibility to the Administration's repeated claims of increased environmental awareness; will serve to illustrate both departmental and agency commitments to the development of innovative partnerships and alternatives for the resolution of regional water conflicts throughout the West; and will provide a much-needed foundation for a variety of current and future non-federal initiatives, including more than $50 million which presently supports this Act in the form of state and private sector water-rights purchase funds, urban-sector conservation investments, and prospective wetlands enhancements.

Conclusions Pursuant to each of the suggestions offered above, we are convinced that S. 1554 will help to bring long-term protection to the unique and fragile environments of the Truckee and Carson River basins through a partnership of federal, state, tribal, and private-sector initiatives. This Act also represents a major step towards the resolution of many, though not yet all, of the conflicts that have burdened these Rivers for much of the last 100 years. We hope that our comments and suggestions will assist in efforts to attain such protection and resolve such outstanding issues, and we look forward to working with the Committee, with Senator Reid, and with other members of the Congress to realize S. 1554's considerable promise.

TITLE III -- WETLANDS PROTECTION

SEC. 301. AUTHORIZATION TO PURCHASE WATER RIGHTS

(a) IN GENERAL -- The Secretary is authorized to purchase water rights, with or without the lands to which they are appurtenant, to benefit wetlands and wildlife areas within the Stillwater National Wildlife Refuge and Wildlife Management Area, Carson Lake, the Fernley Wildlife Management Area, and the Fallon Indian Reservation. All water rights and lands shall be purchased from willing sellers, provided that the Secretary shall not make any such purchases within the Fallon Indian Reservation without the express consent of the Fallon Paiute-Shoshone Tribe (Fallon Tribe).

(b) SELECTION AND TRANSFER OF PURCHASED WATER RIGHTS -- The U.S. Fish and Wildlife Service (Service) shall select from any water rights purchased pursuant to this section, those water rights or portions thereof that can be transferred to the wetlands and wildlife areas described in subsection (a) consistent with the Secretary's affirmative obligations under the Endangered Species Act and other applicable federal laws. The Service shall make any such selection in consultation with the U.S. Bureau of Reclamation (Bureau) and the Nevada Department of Wildlife. Those water rights or portions thereof which the Service so selects shall then be transferred to such wetlands and wildlife areas in accordance with applicable court decrees and state law, and shall be used to apply water directly to such wetlands and wildlife areas. No water rights shall be purchased, however, unless the Service determines that the water rights can be so transferred and applied to direct use to a substantial degree.

(c) MANAGEMENT OF PURCHASED WATER RIGHTS AND LANDS -- All water rights purchased pursuant to this section shall be managed by the Service in cooperation with the Nevada Department of Wildlife, provided that water rights purchased to benefit wetlands and wildlife areas within the Fallon Indian Reservation shall be managed by the Service in cooperation with the Fallon Tribe. Any lands purchased or any water rights purchased but not transferred to the wetlands or wildlife areas described in subsection (a) may be held, transferred, exchanged, or otherwise disposed of to benefit such wetlands and wildlife areas.

(d) DOMESTIC WATER SUPPLY AND SOCIO-ECONOMIC STUDY -- Within two years of the date of passage of this Act, the Secretary shall perform a study and report on the adverse and beneficial social, economic and environmental effects of the water rights purchase program authorized by this section on the Newlands Project area. This study shall include a review of existing rural domestic water supply problems and alternative means of resolving such problems.

(e) DELIVERY SYSTEMS -- The Secretary is authorized to use existing water diversion, storage, and conveyance systems within the Newlands Irrigation Project to deliver water to the wildlife areas and wetlands described in subsection (a) for any water rights purchased and transferred pursuant to this section.

(f) OPERATION AND MAINTENANCE CHARGES -- The Secretary shall reimburse the Truckee-Carson Irrigation District for all operation and maintenance charges on any Newlands Project water rights purchased or transferred pursuant to this section, the same as if such water rights remained appurtenant to agricultural land within the District. Such reimbursements shall be made either annually, or on a lump-sum basis at the time of purchase, through direct cash payments or through equivalent reductions in the District's outstanding repayment obligations to the Bureau.

(g) OTHER REIMBURSEMENTS -- The Secretary shall annually reimburse Churchill or Lyon Counties in Nevada, as appropriate, for property tax revenues forgone as a consequence of the water rights purchases and transfers authorized under this section. The Secretary also shall provide a one-time payment of $50.00 per acre to said Counties, as appropriate, for all lands to which the water rights purchased and transferred pursuant to this section were previously appurtenant. Such one-time payments shall serve as full reimbursement for costs incurred by the Counties in restoring or rehabilitating such lands to their natural or near-natural high-desert state.

(h) CONSTRUCTION -- The water rights purchase program authorized in this section is specific to this section and shall not be construed as a precedent in determining federal responsibilities toward other wildlife areas or wetlands.

(i) AUTHORIZATION -- There are hereby authorized to be appropriated to carry out the provisions of this section:

(1) $4,000,000 for each of the fiscal years 1991, 1992, 1993 and 1994; and

(2) an additional $4,000,000 for each of the fiscal years 1993, 1994, 1995, and 1996, provided that the Secretary has determined in advance of each such additional appropriation that equivalent sums have been or will be provided by the State of Nevada, or by other non-federal interests, for the purchase and transfer of water rights in accordance with the objectives of this section.

SEC. 302. STUDY OF NATIONAL WILDLIFE REFUGE CREATION

Within two years of the date of passage of this Act, the Secretary shall provide the Congress with recommendations concerning:

(1) the transfer of certain U.S. Bureau of Reclamation withdrawn public lands, including existing wetlands and wildlife areas within the Stillwater National Wildlife Refuge and Wildlife Management Area, Carson Lake, and the Fernley Wildlife Management Area, to the U.S. Fish and Wildlife Service for establishment of a permanent National Wildlife Refuge and Wildlife Management

establishment of a permanent National Wildlife Refuge and Wildlife Management Area, to be managed for fish and wildlife purposes in cooperation with the Nevada Department of Wildlife;

(2) the prospective utilization of existing federal hydropower facilities at Lahontan Dam as a source of reimbursement funds under subsections (f) and (g) of this section, or as an added source of funds for the purchase or lease of water rights pursuant to the objectives of this section; and

(3) the prospective termination of community grazing and outlease programs within the boundaries of the Stillwater Wildlife Management Area and Carson Lake pasture.

TITLE IV -- CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM

SEC. 401. TRANSFER OF FALLON NAVAL AIR STATION WATER RIGHTS

(b) AUTHORIZATION OF APPROPRIATIONS -- There are hereby authorized to be appropriated:

(1) such funds as are necessary to develop and implement the alternative outlease program described in subsection (a) of this section; and

(2) such funds as are necessary to fully mitigate the loss of incidental inflows to, and associated habitat within, the wetlands and wildlife areas described in section 301(a) due to implementation of the alternative outlease program described in subsection (a) of this section. The appropriate mitigation total shall be determined by the Secretary of the Interior, and shall be provided by the Secretary of the Navy to the U.S. Fish and Wildlife Service for use in the water-rights purchase program described in Title III of this Act.

SEC. 402. RECOVERY PLANS

(b) CRITERIA FOR DEVELOPING PLANS -- In developing the recovery plans pursuant to subsection (a), the Secretary shall--

(5) consider possible access improvements to the mouth of the Truckee River and to upstream reaches of the Truckee River above Derby Dam;

(c) There are hereby authorized to be appropriated such funds as are necessary to develop and implement the recovery plans described in subsection (b) of this section, including but not limited to habitat improvements in the lower Truckee River and access improvements to the mouth of the Truckee River and to upstream reaches of the Truckee River above Derby Dam.

TITLE VI -- MISCELLANEOUS PROVISIONS

SEC. 601. CLAIMS SETTLEMENT

(c) ... Neither the provisions of this Act nor the occurrence of negotiations under this section shall: release or modify any obligations or liabilities of the United States under the 1906 Agreement, Public Law 95-337, or the federal trust responsibility; or prejudice, modify, or otherwise affect any claim to water rights appurtenant to lands within the Fallon Indian Reservation or the priority, nature, or extent of any such rights; provided that the implementation of any agreements reached pursuant to such negotiations shall be subject to, and consistent with, the Endangered Species Act and the National Wildlife Refuge Administration Act.

SEC. 602. GENERAL PROVISIONS

(b) Subject to, and consistent with, the Endangered Species Act and the National Wildlife Refuge Administration Act, the Pyramid Lake Tribe shall have the sole and exclusive right to regulate all hunting and fishing on all lands, including the bed and banks of the Truckee River and Pyramid Lake, within the boundaries of the Pyramid Lake Indian Reservation.

(g) Nothing in this Act shall modify, conflict with, or create any exemptions from, otherwise applicable federal environmental laws, including but not limited to the Endangered Species Act and the National Wildlife Refuge Administration Act.

ENVIRONMENTAL DEFENSE FUND

Rockridge Market Hall
5655 College Avenue
Oakland, CA 94618
(415) 658-8008
(415) 658-0630 FAX

December 18, 1989

Thomas C. Jensen, Counsel
Committee on Energy and Natural Resources
United States Senate
364 Dirksen Building
Washington, D.C. 20510

Re: S. 1554

Dear Tom:

Enclosed please find the comments of the Environmental Defense Fund (EDF) concerning S. 1554, the Truckee-Carson-Pyramid Lake Settlement Act. These comments serve as an adjunct to those submitted on November 12, 1989 by the Lahontan Valley Wetlands Coalition, portions of which EDF also helped to draft. As you will see, we have tried to incorporate into our comments some thoughts on, and possible solutions to, a number of issues that were raised in the course of your visit to the region last month. We have not, however, offered specific comments on Title I of the bill pending the conclusion of ongoing interstate negotiations.

As you know, EDF has been a principal advocate of incentive-based water-reallocation options for the better part of two decades. Since early 1986, our efforts in Nevada's Truckee and Carson River basins have focused on the development of innovative options and partnerships among agricultural, Tribal, and urban-sector interests for the long-term protection of Pyramid Lake and the Lahontan Valley wetlands alike. Pursuant to the recommendations contained in our comments, S. 1554 will significantly advance the prospects of attaining those goals.

We appreciate the opportunity to offer these comments, and we look forward to the commencement of hearings in early February. In the interim, please do not hesitate to let me know if we can provide any additional information or assistance on these or other matters.

Sincerely,

David Yardas
Analyst

Enclosures

National Headquarters
257 Park Avenue South
New York, NY 10010
(212) 505-2100

1616 P Street, NW
Washington, DC 20036
(202) 387-3500

1405 Arapahoe Avenue
Boulder, CO 80302
(303) 440-4901

1108 East Main Street
Richmond, VA 23219
(804) 780-1297

128 East Hargett Street
Raleigh, NC 27601
(919) 821-7793

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ENVIRONMENTAL DEFENSE FUND

Comments on S. 1554
(Truckee-Carson-Pyramid Lake Settlement Act)

December 15, 1989

TITLE II: TRUCKEE RIVER WATER SUPPLY MANAGEMENT

Modified Releases EDF supports the modified operation of Truckee River reservoirs as presently contemplated under the Preliminary Settlement Agreement between the Pyramid Lake Paiute Tribe and the Sierra Pacific Power Company. Under this agreement, reservoir release requirements whose origins pre-date the 1915 Truckee River Agreement will begin to give way to management options that will enhance both spawning flows for Pyramid Lake's endangered cui-ui and drought-year water supplies for Reno/Sparks (Truckee Meadows) residents. The agreement also provides, through state legislative action, for implementation of a regional water conservation program that includes residential water meters, inverted block rate pricing, and mandatory drought-year conservation. Taken together, these mechanisms will foster both enhanced protection for the Pyramid Lake ecosystem and more equitable water-rate treatment for low and fixed-income water users in the Reno/Sparks area.

Protection of Downstream Rights The most controversial aspect of the preliminary agreement is the potential impact that modified reservoir operations could have on water supplies and rights downstream of the Truckee Meadows. In this regard, it is important to note that enhanced upstream storage will be based on (1) the recapture of waters released from privately owned storage and (2) interim storage of the consumptive-use portion of acquired irrigation rights which are not otherwise needed in non-critical years. Downstream claims to such entitlement-driven storage will in any case be protected (as a matter of water rights) by the provisions of Section 602(f): "Nothing in Title II of this Act, or in agreements made pursuant to it, may affect any recognized or perfected right of any party or entity to use the water of the Truckee River or its tributaries ..." The Nevada legislature also has enacted similar protective standards as part of its conditional repeal of prohibtions against residential water meters in the Reno/Sparks area: "[N]othing in this legislation [S. 1554] or in agreements pursuant to [S. 1554] shall affect any recognized and perfected right of any other party or entity to use the waters of the Truckee River or its tributaries ..." (Assembly Bill 900, June 1989).

Expected Effects A brief review of downstream flows and entitlements suggests that storage-induced flow reductions will have little, if any, effect on the majority of downstream rights. At present, for example, decreed irrigation rights between Vista and Derby Dam (excluding those associated with Newlands Project diversions) result in seasonal (March-October) diversions of less than 5,000 acre feet (AF). During these months, existing discharges from the Reno/ Sparks treatment plant average about 20,000 AF, while inflows above Derby Dam average substantially more than 300,000 AF. (Average inflows are an appropriate point of focus because storage opportunities and potential flow reductions will be greatest under "average" hydrologic conditions. During dry years, the release of waters stored under average conditions pursuant to the preliminary agreement, as well as increased returns from the Reno/Sparks treatment plant, actually should help to "firm up" downstream rights.)

Off-Project Acqusitions Because of the nature of the criteria which govern Newlands Project diversions from the Truckee River at Derby Dam to the Carson River's Lahontan Reservoir, there remain some concerns over the impact of possible flow reductions on Project water rights. (These diversions, which average more than 100,000 AF annually, tend to be greatest during the fall and winter months when upstream storage opportunities also are greatest.) Here again, the provisions of Section 602(f) should suffice, though alternative mechanisms--such as the purchase, by Truckee Meadows interests, of Project water rights--also could help to resolve potential conflicts through compensated reductions in overall Project demands. To effect such alternatives, Title II should authorize the acquisition of Newlands Project water rights, from willing sellers, for transfer to M&I uses both within and outside existing Project boundries. All such transfers should proceed in accordance with state water law, however, and should include the full mitigation of any adverse environmental effects (such as the loss of pre-transfer return flows to the Lahontan Valley wetlands) through in-kind entitlement reservations and/or transfer-based financial assessments. To resolve other third-party concerns, off-Project transfers should comport with the eligibility and re-imbursement criteria described in our coments on Titles III and IV, below.

Inactive Rights In addition to the potential effects of enhanced credit storage, downstream flow reductions will result from the acquisition and use, for M&I purposes, of long-dormant Truckee Meadows irrigation rights. That such reductions already take place under existing "will serve" procedures indicates that they cannot be ascribed to implementation of the preliminary settlement agreement alone. Nonetheless, such effects can and should be resolved as a component of modified reservoir operations through the development of acquisition eligibility criteria for Truckee Meadows irrigation rights comparable to those under development for acquisitions specific to the Newlands Project (see comments, Section 301(b)(1), below.) These criteria should be included as an additional provision of Section 201(a), e.g, "[provided that] decreed irrigation rights acquired for use pursuant to the terms of this Agreement have been utilized during at least one irrigation season between 1984 and the date of passage of this Act."

TITLE III: WETLANDS PROTECTION

Section 301(a)
(Authorization)

This section should be revised to authorize water-rights purchases to benefit federal, state, and Tribal wildlife areas within the Truckee and Carson River basins, including but not limited to the Stillwater and Fallon National Wildlife Refuges, the Stillwater and Fernley Wildlife Management Areas, Carson Lake, and designated wetlands within the reservation lands of the Fallon Paiute-Shoshone Tribes. (See additional comments on permanent-fund leases and Tribal wetlands, Sections 301(e) and 601(c), below.)

Section 301(b)(1)
(Eligibility)

Preliminary Criteria To protect against increased Truckee River diversions under the proposed water-rights purchase program, some definition of active or "eligible" water rights is needed. The criteria currently contained in this section are based on the preliminary standards adopted by the U.S. Fish and Wildlife Service for water-rights acquisitions pursuant to Public Law 100-446. There are, however, several problems with utilizing these criteria on a long-term basis: they are based predominantly on evidence of irrigation during a single irrigation season, for example, and were adopted as a conservative means of assuring that the P.L. 100-446 acquisitions would not further jeopardize the survival of Pyramid Lake's cui-ui or otherwise conflict with the water budget assumptions contained in the final Operating Criteria and Procedures (OCAP) for Newlands Project diversions. It also was understood by each of the parties invovled in the development of the preliminary criteria that they would be replaced by a more comprehensive standard for long-term acquisition purposes--one which allowed, for example, for expected differences between lands under active cultivation and those which may have been irrigated in any particular year.

Long-Term Criteria A subsequent EDF review of Newlands Project acreage data indicates that there will be little substantive difference between the quantity of water rights eligible for acquisition under a single or multi-year historic irrigation standard (see Figure 1, attached). A revised definition which includes as eligible all lands both water-righted and irrigated during one or more years between 1984 (when reliable acreage data are first available) and the date of passage of this legislation thus would add an important measure of fairness to a long-term eligibility standard while continuing to meet the Service's non-jeopardy concerns under the final OCAP. (A multi-year historic irrigation standard also would provide some "breathing room" with respect to the Service's additional responsibilities to conserve and recover Pyramid Lake's endangered cui-ui and threatened Lahontan cutthroat trout. Still at issue, however, is the prospective inclusion of the unused water rights of the Fallon-Paiute Shoshone Tribes under a revised definition of eligibility. Each of these factors is discussed in greater detail in our comments on Title VI, below.)

Section 301(c)(2)
(Transports and Reimbursements)

Extended O&M Reimbursements under this section are intended to ensure that third-party financial interests, particularly those of the Truckee-Carson Irrigation District (TCID), are taken into account. While this legislation authorizes O&M reimbursements, however, experience under P.L. 100-446 reveals that additional authorities may be needed. At present, for example, U.S. Fish and Wildlife Service acquisition regulations preclude the execution of reimbursement contracts with the District for periods in excess of five years. To resolve the District's concerns over the long-term security of such agreements, 20-year, 50-year, and even perpetual reimbursements should be authorized. (In each instance, lump-sum payments at the time of purchase also should be authorized as an alternative to annual reimbursements. At current assessment rates and 6 percent real interest, for example, a 100-year assessment stream would have a lump-sum present-value equivalent of approximately $100 per AF acquired. Such payments would provide TCID with increased reserves that could be managed for near-term infrastructure improvements as well as the long-term security of Project operation and maintenance needs.)

Repayment Credits These and other concerns also could be resolved through the use of "equivalent credits" under Project repayment accounts. At present, for example, TCID's existing repayment contracts with the U.S. Bureau of Reclamation (an accounting total more than $1.5 million) give rise to annual payments to the Bureau of in excess of $80,000. (More than $5.5 million in additional repayment obligations are assigned to "anticipated future repayment contracts" under Bureau accounts for the Project, though no payments are made with respect to these obligations.) If authorized by the Congress, annual O&M reimbursements from the Fish and Wildlife Service to TCID could be replaced, on a pro-rata basis, by credits against current and future repayment obligations to the Bureau. Such domestic "debt-for-nature" credits are particularly appropriate in light of the Bureau's "new mission" and its stated desire to establish "more flexible strategies" ... [in] support of the O&M function ... [and in] cost sharing for resource management.") Based on current O&M assessment rates, EDF estimates that equivalent repayment credits could be used to meet federal O&M reimbursement obligations for the entire program of acquisitions envisioned under this legislation.

Community Taxes and Land Base Section 301(c)(2) should authorize several additional reimbursements. First, "payments in lieu of property taxes" should be authorized to ensure that acquisitions do not result in countywide revenue losses or associated reductions in tax cielings, bonding limits, or inter-governmental relief-tax disbursements. (EDF estimates that such payments would amount to less than $5.00 per AF annually based on current rates and assessments for agricultural lands under Nevada's greenbelt law.) Second, maintenance of the post-acquisition landbase should be supported through a combination of efforts to (re-)establish native species and other low-precipitation grasses and shrubs on retired croplands. For these purposes, the Congress should authorize (1) one-time land rehabilitation assessments of approximately $15 per AF acquired; and (2) funding ($5,000-$10,000 per year for about ten years?) for the establishment of a Project-based plant-materials test site under the U.S. Soil Conservation Service's Plant Materials Program. (The attached letter from the SCS's Plant Materials Center in Aberdeen, Idaho, illustrates the potential for such a program.)

Community Water Supplies An additional third-party concern is the effect that the transfer of water rights might have on induced (incidental) recharge to shallow acquifers throughout the Project area. Yet the shallow regional acquifer, which serves as a predominant source of domestic supply for a widely-dispersed rural population, already exhibits high TDS and arsenic concentrations. Rural domestic supplies (less than 5,000 AF per year) also are small relative to total irrigation supplies (more than 300,000 AF annually), and may be affected by such additional factors as the accumulation of mercury in sediments, dispersed septic discharges, various types of chemical and nutirent pollution, and court-imposed reductions in future irrigation supplies. These and other factors (such as continued growth in non-agricultural sectors) only underscore the need for long-range water-supply alternatives, including the development and distribution of Project surface waters for non-irrigation purposes; the development of dedicated groundwater recharge facilities; and/or possible links to upstream supplies (e.g., conveyance, though isolated pipelines, of potable supplies in combination with proposed effluent deliveries to area wetlands). For these and other reasons, S. 1554 should (1) authorize and fund a review of domestic water-supply options for the Newlands Project area; (2) authorize the acquisition and use of Newlands Project water rights for municipal, industrial, residential, and domestic purposes both within and outside the Project (see comments on Title II, above); and (3) authorize funds on a cost-shared basis for the development of enhanced domestic water treatment and water distribution facilities in the Newlands Project area.

(Note: if Project water rights are acquired by upstream municipalities, both financial and in-kind assistance should be provided to local communities as a component of off-Project transfers. Concerns over maintenance of the recreation storage pool at Lahontan Reservoir also can be addressed through the acquisition of Project water rights by the local beneficiaries of such storage.)

Section 301(e)
(Authorization and Funding)

OCAP Mitigation S. 1554 currently authorizes a total of $16 million in federal appropriations ($4 million annually for four years beginning in 1991) to purchase water rights "to carry out the provisions of this section." These monies are intended as mitigation funding for the adverse effects of the final OCAP, whose implementation (according to U.S. Fish and Wildlife Service analyses) will result in the long-term loss of between 14,000 and 18,000 wetland acres. Even if combined with existing appropriations under P.L. 100-446 and P.L. 101-121, however, the ensuing $18.7 million federal acquisition total is unlikely to support a net increase of more than 6,000 acres of habitat. (This optimistic result is based on P.L. 100-446 average acquisition costs of approximately $450 per AF of eligible entitlement; net gains to the "primary" wetlands at Stillwater and Carson Lake of approximately 0.7 AF per acre-foot acquired; and annual management requirements of 5 AF per acre of wetlands habitat. For a variety of reasons, more reasonable cost estimates under an expanded long-term acquisition program lie in the range of $600-900 per AF of eligible entitlement. Increased acquisition costs will significantly reduce the net habitat benefits associated with any acquisition total.) The current funding authorization of $16 million thus represents an absolute minimum with regard to federal mitigation obligations.

Non-Federal Initiatives Substantially greater sums will be needed if long-term management objectives at Stillwater, Carson Lake, and the Fernley WMA are to be attained. In this regard, at least three non-federal initiatives are noteworthy. First, up to $9 million in State bonding authorities for water-rights acquisition purposes already have been approved by the Nevada legislature, though concurrence of the electorate is still needed. Second, The Nature Conservancy, the Nevada Waterfowl Association, and other conservation organizations have been instrumental in efforts to effect transfers on the wetlands' behalf--efforts which depend on private-sector contributions, and which will continue to involve significant financial risks and resource commitments. Finally, growth pressures in the Reno-Sparks area and water-quality conerns in the lower Truckee River have sparked regionwide interest in the prospective use of reclaimed effluent for water-treatment and wetlands-enhancement purposes at the Fernley WMA and/or other possible sites. While numerous fiscal, environmental, and resource-management concerns have yet to be resolved, this project, if viable, would be financed predominantly by upstream development interests. It thus would involve substantial private-sector contributions of indirect benefit to the wetlands. (The project, if viable, also will serve as a benchmark for effluent re-use and environmental enhancement opportunities throughout the arid West.)

Matching Funds To assist in these and other efforts, the Congress should authorize and appropriate an additional $12 million (e.g., $3 million annually beginning in 1991) for direct acquisition purposes, to be matched by state and private-sector contributions on a dollar-for-dollar basis. These supplemental appropriations, and the linkage between them, would help to meet unsatisfied federal mitigation responsibilities; would provide important support for evolving state and private-sector acquisition initiatives; and would, by EDF estimates, allow for the attainment of management objectives at both Stillwater and Carson Lake, i.e., inflows sufficient to support approximately 24,200 acres of primary wetlands habitat at those sites. (These conclusions are based on an implied total of approximately $43 million in federal, state, and private-sector acquisition funds; average long-term acquisition costs of approximately $750 per AF of eligible entitlement; consumptive-use transfer rates; and the assumed use of upstream effluent for the enhancement of wetlands at the Fernley WMA. If acquisition costs increase significantly, or if effluent enhancements prove environmentally or fiscally infeasible, additional acquisition funds will be needed.) The availability of federal matching funds for state and private-sector contributions also should be contingent on state and private-sector adherence to the eligibility criteria described in Section 301(b)(1), above.

Lease Endowments Natural fluctuations in Great Basin hydrology suggest that year-to-year habitat protection needs will vary considerably from long-term averages. (Figure 2, for example, depicts the expected year-to-year changes in pre-acquisition wetlands acreage at Stillwater, Carson Lake and Fernley given a repeat of 1901-80 hydrologic conditions.) Under these circumstances, habitat benefits may be maximized if federally-funded purchases (i.e., fee-title acquisitions) are supplemented by short-term leases during periods of critical water-supply shortage. Concerns over the sustainability of habitat protection efforts based (in part) on short-term leases could then be resolved through the authorization and establishment of a permanent water-rights lease endowment, with expenditures limited to the accrued interest on endowment balances. (If ten percent of appropriated federal funds were earmarked for lease-endowment purposes, for example, a $3.2 million capital endowment would be provided under the funding recommendations outlined above. At 6 percent real interest, this fund could provide more than $2 million every ten years for 1-2 year leases involving 15,000-30,000 AF of Project entitlements during periods of critical need.)

Section 302
(Study of National Wildlife Refuge Creation)

EDF strongly supports the study described in this subsection. We recommend that this include an investigation into the prospective use of federal hydropower facilities at Lahontan Dam for purposes of attaining the fish and wildife objectives described in this Act, particularly those involving the Lahontan Valley wetlands. (The current lease agreement between TCID and the Sierra Pacific Power Company, which includes the use of these facilities, will expire in 1998.) Such uses should include, but should not be limited to, reimbursements to the U.S. Fish and Wildlife Service for operation and maintenance costs incurred under the water-rights acquisition program; and development of a permanent revenue source for the water-rights lease endowment described under Section 301(e), above.

TITLE IV: CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT

Section 401
(FNAS Alternative Outlease Program and Funding)

Potential Savings EDF supports the development and implementation of a water-efficient alternative to the current outlease of agricultural lands at NAS-Fallon. The substitution of normal pasture operations (at 1.5 AF per acre per year) for the cultivation of alfalfa hay (at 3.5 AF per acre per year) would, for example, continue to meet the Navy's dust abatement and fire safety requirements while reducing annual headgate deliveries by about 4,400 AF annually (a savings potential of 2.0 AF per acre annually for each of the 2,200 acres involved in the current outlease program). These savings, in turn, would reduce diversions from the Truckee River by a long-term average of more than 3,300 AF annually under currently-applicable Project diversion criteria. (Truckee River diversions would fall by an average of up to 5,800 AF annually if Lahontan Reservoir storage targets were adjusted to reflect reduced Project demands. With storage targets unchanged, the savings that would otherwise accrue to the Truckee River instead will serve to reduce shortages during critical years and increase spills during periods of heavy runoff.)

Transfers and Impacts EDF supports the transfer of conserved water rights to Pyramid Lake pursuant to State water law. Such transfers can be accomplished through a variety of mechanisms, including reduced diversion limits and modified storage targets under the final OCAP which reflect lower per-acre entitlements and/or reduced acreage totals, as appropriate. Absent other measures being taken, however, incidental inflows to the wetlands will be reduced by approximately 0.4 AF for each acre-foot reduction in headgate delivery entitlements, i.e., about 1,800 AF annually under the assumptions noted above). The mitigation of these adverse effects, nearly equal in magnitude to the net inflow gains associated with water-rights acquisitions under P.L. 100-446, should be required as an added feature of the alternative outlease program. For these purposes, Section 401(b) should authorize and appropriate such additional funds (approximately $2 million) as may be needed to offset the loss of incidental inflows to the wetlands due to implementation of the alternative outlease program.

Section 402
(Recovery Plans)

EDF strongly supports the development and implementation of effective recovery plans for the endangered cui-ui and threatened Lahontan cutthroat trout. From a biological standpoint, it is appropriate that these efforts focus on recovery within the Truckee River/Pyramid Lake ecosystem by way of improved water quality, restored habitat, improved lower and upper River access, expanded hatchery operations, and increased inflows. To be truly effective, however, this Act must do more than mandate that these factors be "considered" when recovery plans are developed: it also must provide such authority and funding as may be needed to ensure their attainment in the most cost-effective manner possible (see, e.g., the Navy outlease alternative discussed above). For on-Reservation concerns (including lower Truckee River rehabilitation, improved Delta access, and enhanced hatchery operations for both species of fish), these funds, and the manner of their expenditure, could be provided through intergovernmental agreements with the Pyramid Lake Tribe in combination with the economic development fund authorities outlined in Title V (see additional comments, below). Alternatively, this legislation and/or related efforts should return to an approach taken previous drafts: separate sub-sections, authorities, and appropriations for lower River rehabilitation and improved Delta access, as well as expanded hatchery operations and improved upriver access (e.g., fish ladders at Derby Dam).

TITLE V: PYRAMID LAKE DEVELOPMENT FUND

The economic development interests of the Pyramid Lake Pauite Tribe are closely linked to its efforts to protect the Pyramid Lake ecosystem and its endangered and threatened fish species. Accordingly, EDF supports establishment of the Pyramid Lake Paiute Tribal Development Fund in accordance with the provisions of this section as a secure step towards sustainable on-Reservation development and long-term ecosystem protection. Potential environment/development conflicts--such as those involving the long-term protection of waterfowl populations which depend upon relicted reservation lands surrounding (but not included within) the formal boundaries of the Anaho Island National Wildlife Refuge--can be resolved through the development of explicit inter-governmental co-management agreements between the United States and the Pyramid Lake Tribe. More general protective provisions also should be added to this Act, such as those recommended for addition to Section 602 (see comments, below). In any case, the development fund total should reflect the expected costs for recovery plan implementation if such funds are not provided for separately (see comments, Section 402, above).

TITLE IV: MISCELLANEOUS PROVISIONS

Section 601(c)
(Fallon Paiute-Shoshone Tribes)

Settlement Negotiations Section 601(c) requires that the Secretary of the Interior negotiate diligently with the Fallon Paiute-Shoshone Tribes to establish a program for full and prompt implementation of Public Law 95-337 and/or acceptable alternatives thereto, and to resolve and settle a variety of outstanding claims. Without question, these negotiations, or comparable federal efforts, are long overdue, and are properly mandated as a component of this legislation. If at all possible, however, these efforts should begin immediately: prompt action now could result in the development of settlement provisions that would be included as a separate Title in this legislation. (It is our understanding that preliminary discussions between the Fallon Tribes and the Bureau of Indian Affairs provided an appropriate basis for settlement discussions more than six months ago. To the best of our knowledge, however, little, if any, progress has been made since that framework was developed.) One way or another, it is important that ongoing concerns over the acute toxicity of T-J drainage flows to the Stillwater wetlands, as well as the potential for increased Truckee River diversions following "activation" of the Fallon Tribes' unused rights, be resolved as part of these efforts.

T-J Drainage The Fallon Tribes previously have indicated a willingness to consider "acceptable" alternatives to the full development of Fallon II agricultural lands. One such option--the exchange of Fallon II lands for developed farmlands and water rights elsewhere in the Project--would enable closure of the T-J drain (as advocated by the Nevada Department of Wildlife) as well as fulfillment of the Tribes' irrigation rights without an overall increase in Truckee River diversions. (There is tremendous uncertainty concerning the present source of inflows to the T-J drain. It is our understanding, however, that the full development of Fallon II would at least temporarily increase trace element loadings into the drain through the leaching of previously unirrigated soils.) In this regard, the farmlands acquired by the Secretary under the water rights purchase provisions of P.L. 100-446, P.L. 101-121, and Title III of this legislation may provide a number of important land-exchange opportunities at minimum federal cost. (In virtually every instance, the utilization of lands already developed and serviced by Project irrigation and drainage facilities will be cheaper than the development of additional Project lands, particularly where the former already are owned by the federal government.) Such exchange lands must be acceptable to the Fallon Tribes, however, based on parcel size, location, soil quality, drainage characteristics, and a number of additional factors.

Increased Truckee River Diversions While the final OCAP water budget allows for "activation" of most of the Fallon Tribes' unused water rights, it is our belief that those rights can, and should, be fulfilled through mechanisms which avoid increased Truckee River diversions based on current acreage totals. Among our numerous concerns are expected reductions in precipitation and runoff attributable to evolving changes in climate in the western Great Basin--reductions that are not accounted for in the hydrologic analyses which underlie the final OCAP. (As Figure 3 illustrates, Pyramid Lake will absorb the bulk of all such reductions. Extirpation of the cui-ui, as well as endangerment of the breeding colonies at Anaho Island, are distinct possibilities under the reductions so indicated.)

Other factors help to underscore the need for a more focused historical view as the appropriate basis for present-day settlement needs. The Fallon Tribes reserved claims, for example, pertain to Carson basin supplies, and are most properly derived from reductions in other Carson River entitlements. Indeed, like alleged conflicts between Pyramid Lake and the Lahontan Valley wetlands, conflicts between the Pyramid Lake and Fallon Tribes simply did not exist prior to development of the Newlands Irrigation Project. This similarity also points the way to at least one resource-neutral alternative: the improvement of on-Reservation conveyance efficiencies (as already mandated under P.L. 95-337) in combination with compensating acquisitions of eligible Project rights, which together would allow for fulfillment of the Fallon Tribes' claims in a diversion-neutral manner. (Appropriate compensation also could be provided by other Carson Division water users, who have long prospered at the Fallon Tribes' expense.) Interestingly, this approach would provide savings of an estiamted $3-6 million over the projected costs of full development of Fallon II--savings which could be used to offset the adverse wetlands impacts associated with efficiency improvements at Fallon I, including water-rights acquisitions targeted to the maintenance more than 700 acres of existing on-Reservation wetlands.

Economic Development When the settlement concepts which underlie this legislation originally were advanced, economic development funds for both the Pyramid Lake and Fallon Indian Tribes were part of the puzzle. In whatever form they might eventually take--outright cash payments, on-site job training in wetlands management, related educational programs, alternative business development, or the like--such funds should be provided for the Fallon Tribes through authorities comparable to those afforded to the Pyramid Lake Tribe under Title V. (See additional comments, above.) As noted previously, these funds could be provided, in part, through compensation payments from other water users, or from a portion of the federal hydropower revenues referenced in our comments on Section 302, above.

Section 602
(General Provisions)

As discussed previously, an additional protective provision should be included in this legislation, e.g.: "Nothing in this Act shall conflict with, or create any exemption from, otherwise applicable federal environmental laws, including but not limited to the National Environmental Policy Act, the Endangered Species Act, or the Migratory Bird Treaty Act."

FIGURE 1

NEWLANDS IRRIGATION PROJECT
Irrigated Acreage and Water Rights

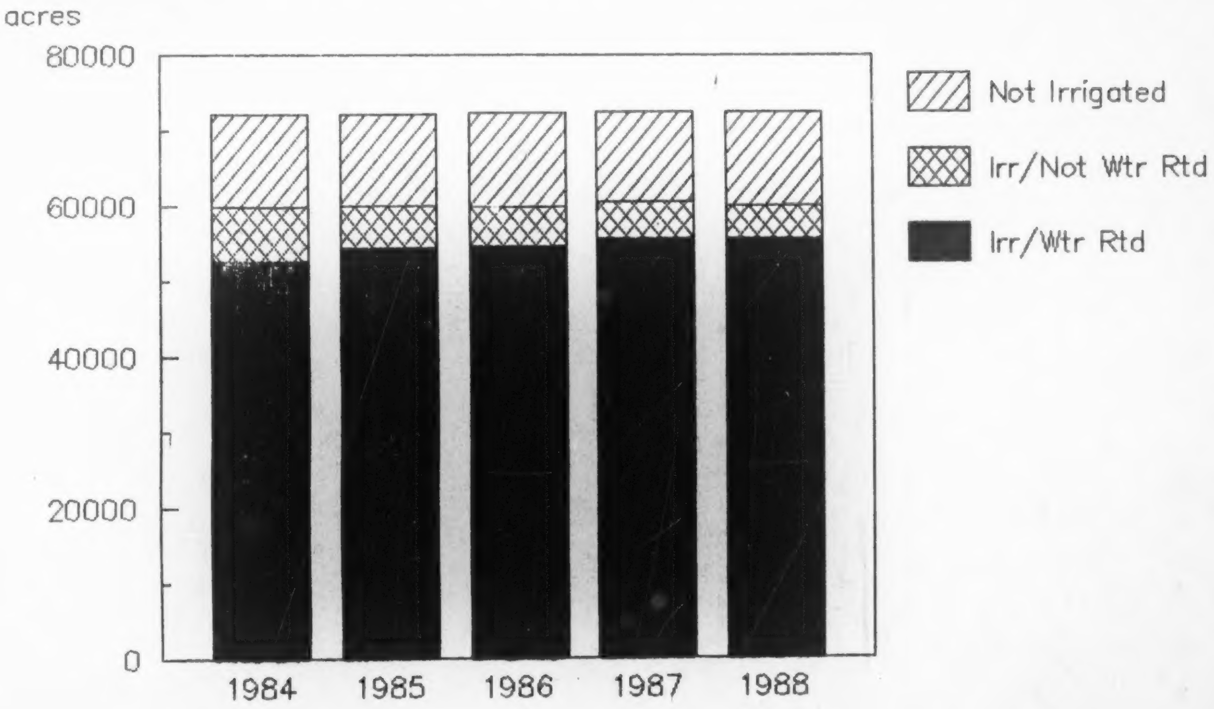


FIGURE 2

LAHONTAN VALLEY WETLANDS

Expected and Target Acres -- Final OCAP

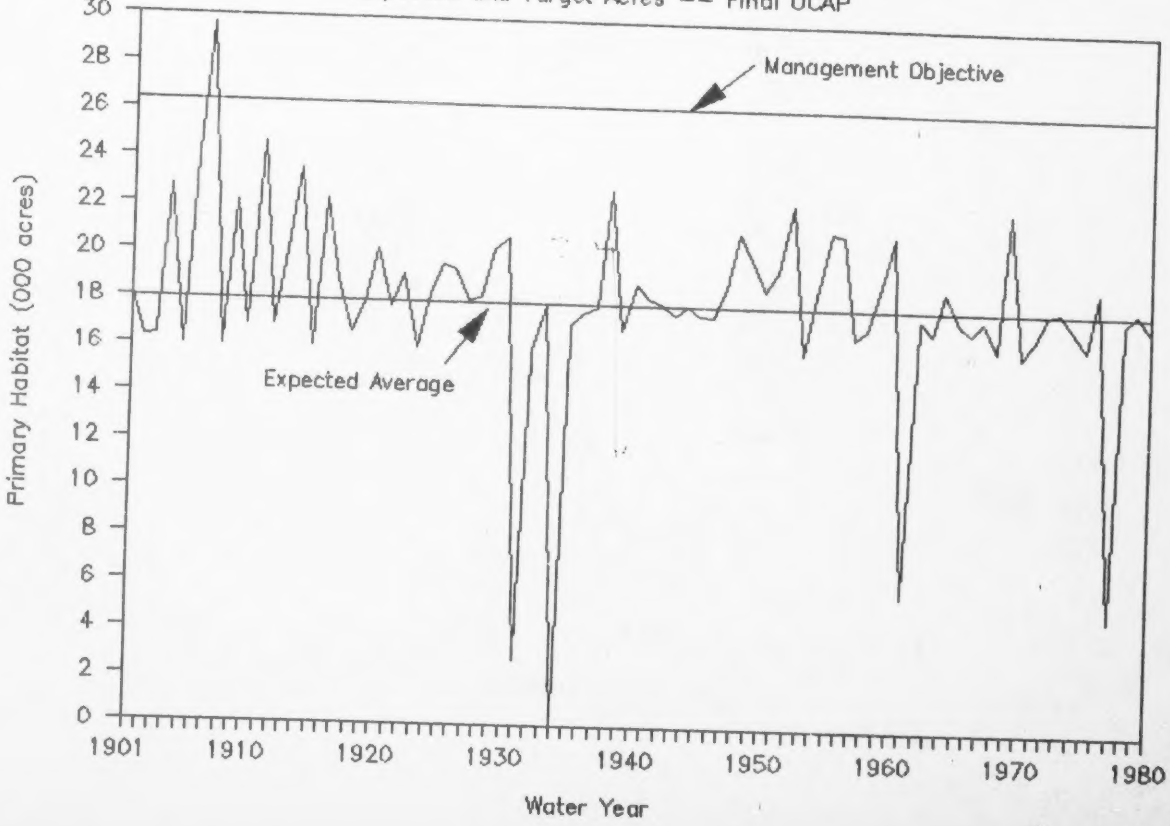
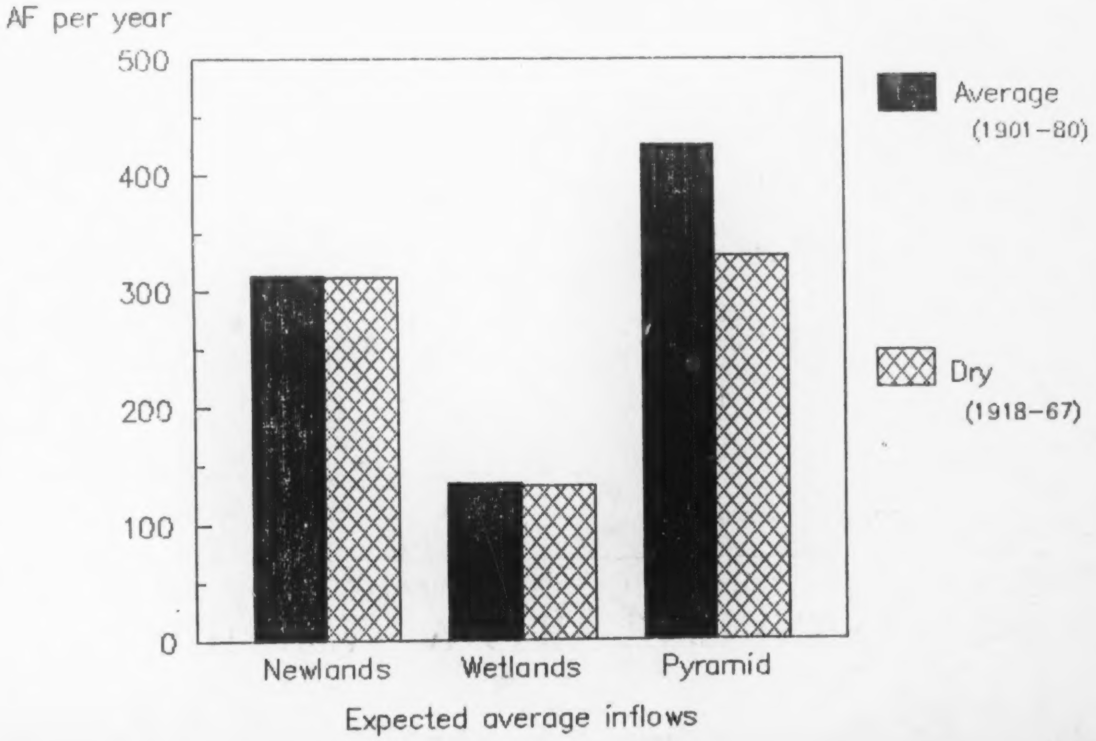


FIGURE 3

Final OCAP
Effects of Reduced Runoff



United States
Department of
Agriculture

Soil
Conservation
Service

Plant Materials Center
P. O. Box AA
Aberdeen, ID 83210

December 11, 1989

David Yardas
Environmental Defense Fund
5655 College Ave.
Suite 304
Oakland, CA 94618

Dear Mr. Yardas:

In response to our telephone conversation on Friday, December 8, I have enclosed several booklets and handouts that explain the Plant Materials Program and the technical information that we provide to the public.

I was extremely interested in your comment and explanation about the Newlands Project and the Fallon Naval Air Station problems. We have had conversations with the FWS about potential reseeding of some of the areas. The requirement of using "native" species has created a problem for the immediate reseeding of the abandoned farmland because there are few "native" species on the commercial market, i.e. available seed in the quantities necessary to seed large acres of ground. The Aberdeen Plant Materials Center has several species of grasses and shrubs that are "native", and survive in low precipitation years. However, continued testing will be necessary before we can release selected cultivars of these plants. A test site at the Newlands Project would greatly assist our development program.

Any additional information on the exact location, scope of the project, objectives of the project, and timetable would be appreciated.

If I can be of further assistance, please don't hesitate to call.

Sincerely,

J Chris Hoag

J. Chris Hoag
Assistant Manager

The Soil Conservation Service
is an agency of the
Department of Agriculture

December 13, 1989

FOR IMMEDIATE RELEASE

CONTACT:

Dave Livermore
The Nature Conservancy
801-531-0999

Robert Wigington
The Nature Conservancy
303-444-2950

Marvin Plenert
U.S. Fish & Wildlife Service
503-231-6214

Willie Molini
Nevada Department of Wildlife
702-789-0500

David Yardas
Environmental Defense Fund
415-658-8008

Ken Taber
Nevada Waterfowl Association
702-786-7718

Landmark Water Right Purchases For Stillwater Announced

Fallon, Nevada - The Nature Conservancy today announced the purchase of two water rights in the vicinity of Fallon, Nevada in a transaction which will eventually help deliver nearly 400 acre feet of badly needed fresh water to the wetlands of the Stillwater National Wildlife Refuge and Management Area. This purchase bodes well for future water rights acquisitions for Stillwater and represents the culmination of months of negotiations between the Pyramid Lake Paiute Tribe (the Tribe), the US Fish and Wildlife Service (the Service), the Truckee Carson Irrigation District (T.C.I.D), The Environmental Defense Fund (E.D.F.) and The Nature Conservancy (the Conservancy) over water right transfers on behalf of the troubled wetlands. Today's purchase follows on the heels of earlier acquisition efforts by the Nevada Waterfowl Association and the Lahontan Valley Wetlands Coalition - Nevada citizens groups, which have worked for over two years on behalf of preserving the unique desert wetlands at Stillwater.

The Nature Conservancy's purchase is from a single landowner, Mr. Mike Casey of Fallon, with closings on the two water right transactions approximately 10 days apart. Mr. Casey will be receiving $135,878 for 150.48 acres of water rights (approximately $300 per acre foot depending on transfer rates). The fair market value of these rights, established according to government appraisal standards, reflects the fact that they are not transferable outside the Newlands Project and that the Stillwater wetlands are considered to be within the original service area for the Newlands Project. The Casey water rights are appurtenant to two parcels of farm ground in the Pasture Road and Soda Lake regions of the Newlands Project. A water right application which, if approved, will send most of the acquired water to the Stillwater wetlands this spring, is pending before the Nevada State Water Engineer.

The Nature Conservancy's acquisition of the Casey water rights represents new hope for the Stillwater wetlands which have declined in size in recent years from 50,000 to fewer than 7,000 acres. The cause of this decline has been changing water allocations, litigation and drought - but the Conservancy's purchase represents a concerted effort to reverse this trend. Over the last several months, Conservancy, EDF and U.S.Fish and Wildlife negotiators have been working with the Pyramid Lake Paiute Tribe and the Truckee Carson Irregation District in a good faith effort to avoid potential protests to water right transfers. If free from protest, the Conservancy`s pending water right transfer application would more likely be approved by the State Water Engineer.

Funds for the Casey water right purchases have been extended to this project through a loan from the Nature Conservancy's Land Preservation Fund and will be repaid over time by the U.S. Fish and Wildlife Service as the water is transferred to the wetlands. The Conservancy's commitment is being made after close coordination with the Service in a public-private partnership established between the organizations to save the dying marsh. Congressional monies available to the Service for acquiring water rights at Stillwater include $1.2 million appropriated by Congress for Fiscal Year 1989 and $1.5 appropriated for Fiscal Year 1990. Senator Harry Reid, a leader in the effort to achieve a legislative solution to the Stillwater conflict, has introduced a bill which authorizes $16 million to purchase water rights for the wetlands. On the state level, Nevada voters will have an opportunity to approve $5 million for Stillwater next fall by voting yes on Question 5, the Nevada Parks and Wildlife Bond Issue.

The Casey water right purchases are the first of many water right acquisitions on behalf of Stillwater that the Conservancy and the U.S. Fish and Wildlife Service hope to pursue over the coming months. With this in mind, the Truckee Carson Irrigation District has endorsed acquiring 20,000 acre feet of water rights within the Newlands Project. Priorities for acquisition include water rights on farmlands which are inefficient to irrigate and have marginal soils. The Conservancy intends to transfer the water rights it purchases for the Stillwater wetlands without increasing water diversions from the Truckee River system so that the endangered cui-ui fish species in the Truckee River will not be jeopardized.

Through the hard work of the Lahontan Valley Wetlands Coalition and the Nevada Waterfowl Association, the plight of Stillwater has attracted national media attention. These local conservation organizations have assisted the Conservancy and the Service with the Stillwater effort - as have the Nevada Department of Wildlife and the Environmental Defense Fund.

Speaking on behalf of the Nevada Waterfowl Association, Dr. Ken Taber, its President, stated, "The acquisition of the Casey water rights is an important step in the protection of one of the great wetland ecosystems of the west. We are glad to have been a part of this process."

On behalf of the U.S. Fish and Wildlife Service, Mr. Marvin Plenert, Regional Director stated, "We are grateful that the Nature Conservancy has been able to assist with interim financing and legal assistance for this important project. Our partnership with the Conservancy has been highly productive and we look forward to working further with the Nature Conservancy in protecting Stillwater's marshes and other critical wetlands throughout the West."

Mr. Dave Livermore, Director of the Great Basin Field Office for the Nature Conservancy, said, "Nevada is one of the most ecologically significant states in the country, and Stillwater is the most important wetland in Nevada. We have already lost 85% of Nevada's wetlands in this century and at Stillwater, time is running out. The Conservancy's purchases will help preserve this nationally significant wetland before it is too late."

Mr. David Yardas, senior analyst with the Environmental Defense Fund in Oakland, California, stated, "The Conservancy's purchase demonstrates that the preservation of the West's endangered aquatic resources can be accomplished through mutually-beneficial efforts involving federal, state, tribal, agricultural and environmental interests." EDF, an original advocate of water right acquisitions for Stillwater, has provided important technical assistance to the Conservancy and the Service throughout the course of their water right purchase negotiations.

Mr. Willie Molini, Director of the Nevada Department of Wildlife added, "The preservation of Stillwater is one of the most pressing conservation needs in Nevada. The Conservancy has come through again to help at a critical juncture. This certainly is a proud day for the conservation community."

The Nature Conservancy
Great Basin Field Office

BACKGROUND INFORMATION

STILLWATER WETLANDS MEGASITE

The Resource

Located in Northern Nevada 60 miles east of Reno, the Stillwater National Wildlife Refuge and Management Area and the Lahontan Valley Wetlands represent the most critical wetland ecosystem in Nevada and a key "steppingstone" on the Pacific flyway. Stillwater supports 50% of Nevada's waterfowl including 200,000 ducks, 1,000 geese, and one of the largest white-faced ibis nesting colonies in the west. In addition, Stillwater provides a foraging base for wintering bald eagles, peregrine falcons, and the great white pelican. Because of its large numbers of dowitchers (over 1/3 of the Pacific Flyway's total population) Stillwater has been designated as a Western Hemispheric Shore Bird Preserve - one of only 13 in the world.

Inextricably tied to the Stillwater wetland ecosystem is the Truckee River and Pyramid Lake ecosystem - a preservation need of formidable proportions in its own right. Pyramid Lake and the Truckee River support two fish species: the cui-ui, on the Federal Endangered Species List, and the Lahontan cutthroat trout, on the Federal Threatened Species List. In addition, Anaho Island in Pyramid Lake is one of the largest white pelican rookeries in North America.

The Threat

Nevada is one of the driest states in the nation - and also one of the most unique from an ecological standpoint. In fact, Nature Conservancy biologists have ranked Nevada 5th amongst all states in terms of its ecological diversity. Much of this diversity is tied to wetland ecosystems and yet the state has lost over 85% of its wetlands in this century. Stillwater is next on the dry up list. An 80-year water rights battle involving the Pyramid Lake Paiute Tribe, the city of Reno, the Truckee-Carson Irrigation District, the Fallon Paiute - Shoshone Tribes and local farmers in Fallon is coming to a head. At stake is the destruction of Nevada's last major wetland ecosystem. Already Stillwater's wetlands have shrunk from 50,000 acres to less than 7,000 acres due to drought and excessive upstream diversions. Toxicity problems also exist and threaten to contaminate portions of the Stillwater wetland ecosystem. In short, a lack of water threatens to turn Stillwater from a haven for waterfowl into a dying marsh.

The Solution

Fortunately, there is hope for Stillwater. The solution is to purchase water rights from farmers within The Newlands Project as a way of retiring marginal farmland, removing toxins from the system and transferring water to the wetlands. Biologists estimate that 55,000 acre/feet of clear, clean water is needed. This amount, combined with existing irrigation return flows, will create a permanent marsh of nearly 25,000 acres.

Preserving Stillwater will demand a tremendous commitment of public and private resources - some estimates are as high as $40 million. Fortunately, there is strong local support for the project. Senator Harry Reid and members of the national conservation community are working together to secure $16 million through current legislation. Already Congress has appropriated $1.2 million for the project in F.Y. 1989 and $1.5 million in F.Y. 1990. On the state level, Nevada voters will have a chance to approve $5 million for the wetlands in November of 1990 by voting in favor of Question 5, Nevada's parks and wildlife bond issue.

A Public-Private Partnership

The Nature Conservancy has joined forces with the U.S. Fish and Wildlife Service to acquire the lands and water rights necessary to preserve Stillwater. In a cooperative effort, the Conservancy has paid for extensive appraisals, hydraulic surveys, title reports and legal work to begin the process. Staff support has been provided by the Conservancy's Great Basin Field Office in Salt Lake City. Legal support has been provided by the Conservancy's Western Water Attorney based in Boulder Colorado. In Washington, the Conservancy has been working on behalf of Stillwater on Capitol Hill.

As the lead public agency for the project, the U.S. Fish and Wildlife Service has provided staff support out of its Western Regional Office in Portland Oregon and local offices in Reno and Fallon. The Service has worked to write the environmental documents, lead key negotiations and, through its realty division, participate in the acquisition process.

Conservation groups besides the Conservancy actively involved in the Stillwater issue include: the Environmental Defense Fund, which has provided technical support by analyzing water needs and stream flows; the Lahontan Valley Wetlands Coalition, which is continuing to attract national media attention to the plight of Stillwater; the National Audubon Society, which is actively involved in seeking Federal appropriations for the project; the Nevada Waterfowl Association, which is involved with local fund raising and water rights purchases; and others.

ENVIRONMENTAL DEFENSE FUND

Rockridge Market Hall
5655 College Avenue
Oakland, CA 94618
(415) 658-8008

NEWLANDS PROJECT WATER-RIGHTS ACQUISITIONS:

Orderly Reallocations and Third-Party Effects

David Yardas

Prepared Comments
before the
Committee on Western Water Management
Water Science and Technology Board
National Research Council

Reno, Nevada
October 26, 1989

NEWLANDS PROJECT WATER-RIGHTS ACQUISITIONS:

Orderly Reallocations and Third-Party Effects

David Yardas

I very much appreciate the opportunity to speak before you today on the subject of "orderly" reallocations of federally-developed water. For the last four years, the Environmental Defense Fund (EDF) has been an enthusiastic advocate of the acquisition and transfer of Newlands Irrigation Project water rights as a preferred means of (1) resolving unnecessary conflicts between Pyramid Lake and the Lahontan Valley wetlands, (2) providing the Lake and the wetlands with rights equivalent to those of other "prior" appropriators, and (3) beginning to address a growing array of simmering water-quality problems. I thus stand before you today with a distinct environmental bias, an advocate for the long-neglected rights of the original third parties of federal water-resources development, and of the need for re-adjustments which take greater account of the effects of our current system of appropriated rights on beleaguered instream and downstream environments.

Given that bias, it remains our view that "willing-seller" acquisitions provide one of the few means of accomplishing such re-adjustments in ways that respect both established property rights and associated community values. Cast against a backdrop of public-trust assertions and endangered species litigation, for example, water-rights acquisitions can be viewed as an opportunity to bring needed dollars into transitioning rural economies and, if appropriately structured, a means of improving the rural infrastructure and surrounding environments alike. Compensated transfers may also prove indespensible in efforts to resolve the equitable claims of Native American communities (the other predominant third-party of federal water-resources development) without further degrading our overtaxed instream resources. For these and other reasons, EDF remains committed to acquisitions as an important reallocation tool, and to the search for options and alternatives that can help to ensure their equitable implementation.

WATER RIGHTS FOR THE ENVIRONMENT

In this regard, it is exciting to be able to talk about "orderly" water-rights reallocations in the context of the evolving program of public- and private-sector acquisitions of Newlands Project water rights for benefit of the Stillwater and other Lahontan Valley wetlands. These acquisitions are, I believe, unique in that they involve the preservation of a local (albeit internationally-significant) environmental resource, and do not (at least as yet) involve out-of-area exports to distant and burgeoning municipalities. The specter of "off-Project" transfers looms large, however, given growth in the Reno-Sparks area, the long-term needs of the Pyramid Lake ecosystem, and the likely limits of public-sector funds for "in-Valley" acquisitions. They also make a good deal of sense, at least if appropriately constrained: contemplated off-Project transfers involve nothing more than the re-capture of waters from an area of existing use (via imports) to their original basin of origin. Accordingly, my comments focus on, but are by no means limited to, the third-party effects associated with in-Valley transfers to the wetlands.

THIRD-PARTY EFFECTS AND OPTIONS

So what kinds of third-party effects are likely to arise as a consequence of such acquisitions? Figure 1 lists many (though probably not all) of the third-party issues that have been identified by a wide range of interests in the context of these in-Valley environmental transfers. For convenience, the effects are grouped into three general classes of concern: direct hydrologic effects; direct financial effects; and both direct and indirect effects on local economy and authority. Also identified, however, are issues that would arise predominantly (though not necessarily exclusively) as a consequence of off-Project transfers. (Differences between historic farm deliveries and post-transfer deliveries to the wetlands could, for example, result in incremental reductions or increases in pre-transfer hydropower revenues. Hydro-revenue losses can be expected as a consequence of most off-Project transfers, however, particularly those involving "active" Carson Division rights.) Note, in any case, that the list in Figure 1 is broad, and that very few transfers would be expected to give rise to the full range of all possible effects.

What, then, can (or should) we do to address these effects? For these purposes, it is useful to distinguish between three categories of response: (1) strategies which seek to avoid or minimize third-party effects in the first place; (2) mechanisms which provide various forms of in-kind or

Figure 1

NEWLANDS PROJECT WATER-RIGHTS ACQUISITIONS

Third Party Issues and Concerns

HYDROLOGIC EFFECTS

- Loss of pre-transfer return flows
    - Other rights-holders
    - Non-water righted dependents
    - Groundwater

- Increased diversions/deliveries
    - Active/inactive rights
    - Conveyance losses / efficiency
    - Historic use / entitlement

- Deteriorating land base
- Reduced storage (off-Project)

DIRECT FINANCIAL EFFECTS

- Loss of O&M revenues
- Loss of hydropower revenues (off-Project)

LOCAL ECONOMY AND AUTHORITY

- Reduced property tax base
    - Direct receipts
    - Transfer payments
    - Bonding capacity/spending limits

- Reduced community income

- Post-transfer ownership
    - Voting rights
    - Subsequent exchange (ESA, effluent)
    - O&M non-payment
    - Transfer re-opener

- "Owens Valley" (off-Project)
    - Quality of life
    - Growth potential

financial compensation where adverse third-party effects cannot be avoided; and (3) "laissez faire" (or do nothing) alternatives. Let me first describe a few possibilities under categories (1) and (2), and then turn to a somewhat more philosophical discussion of (3).

To avoid or minimze third-party effects:

Long-term eligibility criteria Agreed-upon definitions of "eligible" (or active) water rights, transfer rates, and associated conveyance-loss effects would help to ensure that transfers to the wetlands (or elsewhere) are accomplished in a "resource-neutral" manner.

Paired acquisitions Given a definition of eligible rights, paired eligible/ineligible acquisitions could provide a means of compensating the holders of ineligible rights for prior-year O&M payments. (Actual transfers would be limited, however, to rights defined as eligible.) Ultimately, such "equity" concerns would best be handled directly through water charges based on the quantities of water actually delivered to the farm headgate.

Transitional irrigation deliveries These could be "reserved" for a 1-2 year period prior to transfer to promote the establishment of suitable replacement species (i.e., native grasses) and to help in other land-rehabilitation efforts.

Targeted acquisitions Acquisition priorities (e.g., selected parcels) could be used to maximize transfer-induced water-quality benefits and/or minimize adverse conveyance-loss or community-income effects.

Acquisition phasing/limits Year-to-year and/or overall acquisition ceilings (reservations) could be established, allowing for appropriate "phase-ins" and smooth transitions from current conditions. "Reasonable" limits will, of course, be needed, and will undoubtedly remain the subject of much discussion and debate. One suggestion: off-Project transfers to the Truckee basin should be limited to the current (expected) long-term average of imports from that basin.

Threshold criteria Appropriate threshold criteria could help to ensure that other "cost-effective" options (e.g., conservation options or drought-year leases) are fully explored and implemented. Similar thresholds could also be established with regard to proposed water-rights exchanges for effluent-replacement purposes (e.g., water-quality standards must be attained, or "equivalent habitat benefits" provided).

Joint ownership Post-transfer ownership could reside with several entities (e.g., federal and state wildlife agencies, or public and private acquisition trusts) as a means of ensuring optimum resource management or the attainment of designated threshold criteria.

Community acquisition trusts Community trusts (with broad-based community-wide representation) could provide an important forum for local input, dispute resolution, and the establishment of reasonable and appropriate thresholds. Such trusts could also serve as a centralized fund for direct-acquisition purposes, and as co-holders of publicly-acquired rights.

Implementation alternatives A variety of implementation alternatives (e.g., drought-year leases and bid/auction mechanisms) could be used to maximize the environmental and community benefits of available acquisition funds, and to ensure compliance with established priorities and thresholds in a cost-effective manner.

To mitigate or compensate for third-party effects:

Return-flow entitlements Consumptive-use transfer limits (as appropriate) could be accompanied by transfer-induced "return-flow entitlements" (or other comparable reservations) for delivery to loss-dependent wetlands or for purposes of dedicated groundwater recharge. Transfer-based reservations (and/or outright acquisitions) could also be used to fulfill Tribal water-rights claims in a resource-neutral manner.

Transfer assessments/fees One-time transfer-based assessments could serve as a source of revenue for hydropower and/or O&M compensation; land rehabilitation costs; conveyance-efficiency improvements (canal lining, check structures); enhanced groundwater resources development; and/or general community development (low-interest loan funds).

Repayment credits Project repayment accounts could be credited on an annual or lump-sum (present value equivalent) basis as an alternative means of off-setting forgone hydropower and/or O&M revenues due to federally-financed acquisitions (i.e, "debt for nature" exchanges).

Annual reimbursement agreements Tax-exempt entities (state and federal governments or other municipalities) could provide, by purchase agreement or otherwise, payments in lieu of taxes based on pre-transfer land classifications and current assessment rates. Tax-role credits could also be provided (as appropriate) for the distribution of city-county relief taxes (intergovernmental payments) and determination of local spending limits.

STEPPING BACK

It seems both reasonable and responsible to avoid or minimize, to the greatest extent possible, the adverse third-party effects of water-rights acquisitions and transfers. Questions of third-party compensation force us to confront a more fundamental issue, however: the extent to which compensatory payments should be provided. From this perspective, water-rights transfers can be viewed as one of a variety of factors affecting a transitioning rural economy, with certain third-party effects the inevitable consequence of the ongoing transition. Indeed, as convincingly discussed by Sax, Wilkinson, and others, the classic doctrine of appropriated rights is itself in transition, in part because society's values have changed: we can no longer pretend that "business as usual" can or will continue, or that the adverse effects of decisions made long ago are an inevitable part of the future. In this regard, a realistic view of the present-day farm economy and environment is important, both as a backdrop to proposed water-rights acquisitions and as a means of understanding the opportunity that acquisitions present. For example:

o Gross crop values in the Newlands Project area (1984 data) accounted for less than 10 percent of estimated gross regional (county) product, while farm earnings accounted for approximately 2 percent of county-wide personal income. Meanwhile, irrigation demands (dominated by alfalfa, other hay, and pasture) accounted for more than 95 pecent of total water use.

o Depressed commodity prices and reduced acreage totals resulted in real revenue losses between 1980 and 1987 of about $5 million annually (approximately a fifth of total crop revenues). Such losses, as well as the reduced headgate deliveries associated therewith, undoubtedly resulted in third-party effects similar in magnitude and importance to those associated with proposed in-Valley and off-Project transfers.

o Recent court decisions and administrative actions have resulted in mandated reductions in Project diversions and deliveries amounting to nearly a fifth of "historic" totals. A comparable quantity of acquisitions, providing full compensation to willing sellers and at least partial compensation to affected third parties, would all but ensure attainment of long-term wetlands management goals.

o Existing groundwater quality problems (high arsenic concentrations in domestic water supplies, high trace-element concentrations in Project drainage) underscore the importance of alternatives to the current reliance on induced irrigation recharge as a predominant source of rural drinking water or wetlands inflow, whatever the volume of transfers.

Finally, it is important to note that oft-repeated references to California's "Owens Valley" experience tend to obscure the benefits associated with in-Valley (and even appropriately-structured off-Project) acquisitions: enhanced income potentials (particularly in the case of debt-burdened and marginal farms); improved conveyance efficiencies; avoided litigation expenses; avoided drainage and treatment costs; enhanced recreational opportunities and revenues; and healthy, viable, ecosystems that our children can enjoy. Moreover, if an Owens Valley analogy is appropriate within these basins, it applies most readily to the downstream environments and Tribes whose losses financed the development of this Project. All such factors, including necessary distinctions between areas of origin and areas of existing use, should be included as critical components in the assessment of third-party effects and appropriate compensation values.

RECOMMENDATIONS

So where does all this leave us? What's needed, ultimately, are authorities and mechanisms that will enable realization of the third-party avoidance and minimization options discussed above; the use, as needed, of alternative compensation and mitigation arrangements; and, either directly or indirectly, resolution of a variety of unresolved environmental and Native American claims in conjunction with private-sector acquisitions. To this end, omnibus legislation authorizing the transfer, use, and delivery of federally-developed water and the use of federal facilities for environmental and other non-irrigation purposes, both on and off-Project, should:

o require that "marketable" entitlements satisfy some form of historic use test, such as a 5-year headgate-delivery or irrigated-acreage standard;

o reserve a portion (e.g., one-third) of all marketable entitlements acquired by private-sector entities for transfer and delivery to environmental, Tribal, and third-party uses;

o authorize the establishment of environmental acquisition trusts for the pooling of public and private-sector funds, and for the implementation of drought-year leases and lease-purchase options on a long-term sustainable basis;

o authorize the use of a variety of "fair-market value" implementation options (such as prioritized bids and auctions) so as to maximize the environmental and community benefits of available acquisition funds;

o provide for the expanded use of lump-sum reimbursement options, including "debt-for-nature" repayment credits and community development assessments;

o require both public and private-sector payments in-lieu-of taxes (and associated tax-role adjustment), as needed; and

o mandate pricing reforms (including commodity charges and damage or liability assessments) based on actual headgate delivery and drainage totals.

Federal support for the development and implementation of domestic water-supply alternatives in rural areas (such as dedicated recharge facilities, deep-well extensions, and expanded municipal treatment and distribution) would also facilitate orderly transfers and the resolution of ongoing water-quality concerns. It would also be helpful (though certainly difficult) if the current "appurtenancy" standard for Newlands Project entitlements could be replaced by some form of delivery- or diversion-based standard, perhaps following a delineation of marketable (i.e., eligible) entitlements. Such a change would effectuate partial-entitlement transfers, increase the farmer's flexibility over post-transfer deliveries and use, minimize the potential dislocations associated with transfers from individual blocks and parcels, and generally increase individual incentives to conserve.

CONCLUSIONS

The unique acquisition efforts unfolding within the Truckee and Carson River basins offer hope to a long list of endangered aquatic environments throughout the West--particularly if a model for "orderly" and community-conscious transfers can be established. Accordingly, the Committee's interest in and attention to the problems associated with Newlands Project water-rights transfers is both important and appreciated. On behalf of the Environmental Defense Fund, I hope that you will find these comments helpful as you deliberate on alternative means to facilitate orderly re-allocations of federally-developed water.

Senator BRADLEY. Thank you very much, Mr. Yardas. Ms. Nappe.

STATEMENT OF TINA NAPPE, COORDINATOR, LAHONTAN VALLEY WETLANDS COALITION

Ms. NAPPE. Thank you. I would first express my appreciation for being able to testify on behalf of S. 1554, which represents several years of positive negotiations following years of animosity. My name is Tina Nappe. I am from Reno, Nevada, and I am the Coordinator of the Lahontan Valley Wetlands Coalition. I also represent conservation on the State Board of Wildlife Commissioners, and am the Director of a job training program which covers 13 counties in northern Nevada.

The Coalition has a membership comprised of 16 national, State and local sportsmen and conservation organizations. The Coalition was formed in the fall of 1987 out of concern for the worsening status of the wetlands as a result of drought and the impacts of new operating criteria. Of those 16 Coalition members, we have present today in the audience representatives of the Nevada Waterfowl Association, the Nevada Wildlife Federation, and the Toiyabe Chapter of the Sierra Club.

I will not further elaborate on a history of Federal actions which has ignored, and then has been destroying, the wetlands. Nor to compliment Senator Reid, as others have done, on his leadership, his patience and endurance, and interest and willingness to listen and work with all interested groups. He has been a truly wonderful person. Nor to summarize once again the many values to be derived from the bill. But to focus instead on the wetlands.

First of all, the Coalition supports the development of the bi-state resolution which ensures that waters will at least come down to both Pyramid Lake and to the wetlands.

Second, to compliment the authors of the legislation for the $16 million which is provided within this bill to assist in the restoration and preservation of those areas. We regard this money not as a total amount needed, but basically as a downpayment on the future of these wetlands. As you have heard today, the State has already committed, the State of Nevada has committed $8 million. $4 million to purchase wetlands, and $4 million to increase the efficiencies of the project. Another $5 million is on a state and wildlife parkbond bill which will be voted on in November.

Not mentioned here today either has been the private sector involvement through the development of the Nevada Waterfowl Association in Nevada, which has existed for two years and is in the process of holding fund raising events and has committed its major efforts towards the Lahontan Valley wetlands. And I would like to, Mr. Chairman, enter into the record their testimony before you today, which they have provided.

Senator BRADLEY. It will be submitted to the record.

Ms. NAPPE. Second, I would like to comment just a little bit on the relationship between the cost of water and the amount of water needed for the wetlands, and some aspects of the bill which do directly relate to it. One of those has to do with the criteria that is suggested in the bill. The amount of money that would be needed for the water will depend on the amount of water one can get when one purchases it. And secondly, to talk a little bit about the Navy Air Station. Both of these areas are important for another aspect as well, because they do impact on State authority governing water law.

In Title III, 301-b, section 1 of the Title III, directs the use of the Fish and Wildlife Service eligibility criteria, which was used under PL-146. That predetermines what western private water rights can be purchased before reaching the state for action, and the state was not party to developing that criteria. That is why we recommend in our testimony that the eligibility criteria be developed by the Secretary and the states participate under this bill and henceforth.

Also, in Title IV requires that any water saved on the Navy Air Station goes to the Truckee River, even though it is recognized that a portion of the water source is from the Carson River. This removes the determinations for disposition of those waters from the State authority.

In addition to that, we also favor in the bill study of refuge status for the Lahontan Valley wetlands, including the Fernley wildlife management area. We fear the loss of these wetlands as a refueling station for birds flying north and south, east and west, and for both shorebirds and waterfowl. And we would like to remind the committee that these wetlands are important and that these wetlands were made a western hemisphere shorebird reserve as part of their international importance.

Finally, we are concerned about ensuring the future of Anaho Island National Wildlife Refuge as a key nesting area for the white pelican and other colonial nesting species. This bill should ensure that sufficient water goes into the lake to maintain the island as a refuge, along with the wetlands which provide their food source. Continuance of refuge status will ensure that the nesting sites remain protected.

Attached are our comments for specific recommendations for the bill, and in closing I would like to say how pleased we are about your holding these hearings and inviting us to testify. We look forward to working with you on this bill.

[The prepared statement of Ms. Nappe follows:]

LAHONTAN VALLEY WETLANDS COALITION
P.O. BOX 50706, RENO, NEVADA 89513

LAHONTAN VALLEY WETLANDS COALITION STATEMENT
ON S1554 - THE TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS ACT
BEFORE THE SUBCOMMITTEE ON WATER AND POWER
FEBRUARY 6, 1990

Good morning. Thank you for the opportunity to testify on behalf of S1554 which represents several years of positive negotiations following over 50 years of animosity.

I am Tina Nappe from Reno, Nevada. I am the coordinator of the Lahontan Valley Wetlands Coalition. I also represent conservation on the State Board of Wildlife Commissioners and am the Director of a job training program which covers 13 counties in northern Nevada.

The Coalition has a membership comprised of 16 national, state and local sportsmen and conservation organizations. The coalition was formed in the Fall of 1987 out of concern for the worsening status of the wetlands, as a result of drought and the impacts of new operating criteria mandated to protect an endangered species, the Cui-ui. The wetlands appeared to be virtually ignored in these discussions.

Of those 16 coalition members, we have present today representatives of the Nevada Waterfowl Association, Nevada Wildlife Federation, an affiliate of the National Wildlife Federation, and the Toiyabe Chapter of the Sierra Club.

Through the 1960's to the early 1980's, we saw the Department of Interior representatives develop several operating criteria and procedures for the Newlands Project and knew of negotiated settlements being conducted. Over those years the Department of Interior did not consider the worsening status of the Lahontan Valley wetlands nor did they recognize any responsibility for or need to include the future of those wetlands in any of these undertakings.

Therefore, Mr. Chairman and members of this Committee, we wish to emphasize that S1554 is the first negotiating document that fully and fairly provides a future for those wetlands. The proposed legislation is consistent with "Federal goals to protect valuable national wetlands..." For that we owe Senator Reid, is staff and others who have worked on behalf of this legislation as reflected in Title III of this Act a deep debt of gratitude.

The Coalition supports S1554 because it represents a major gleam of hope for the future of the Lahontan Valley wetlands. The $16,000,000 included in S1554 will assist in the restoration and preservation of those areas.

S1554 will also ensure that Nevada's share of the Truckee and Carson Rivers will flow across the state line for use in Nevada. As growth occurs on the upper reaches of both rivers in Nevada and California, the terminal waters at Pyramid and the wetlands face greater insecurity, a problem that S1554 will rectify.

We also strongly favor the study of refuge status for the Lahontan Valley wetlands with the Fernley Wildlife Management Area included. We fear the loss of these wetlands as a refueling station for birds flying north and south, east and west will affect the future populations of shorebirds and waterfowl throughout the Pacific Flyway and the Northern and Southern Hemisphere.

And finally, we are concerned about ensuring the future of Anaho Island National Wildlife Refuge as a key nesting area for the white pelican and other colonial nesting species. This bill should assure that sufficient water goes into the lake to maintain the island as a refuge along with the wetlands which provide their food source. Continuance of refuge status will ensure that nesting sites remain protected.

Attached are specific comments regarding our areas of interest in S1554. Of priority are changes in Title III Section 301 (b) (1) water right eligibility criteria and the addition of a provision whereby Congress provides relief from the Alpine Decree (Federal Court) removing the water right transfer use penalties when water is obtained for wetlands; Section 302 study of National Wildlife Refuge creation; addition of a new section 303 to provide that the Secretary will study and re-evaluate the Anaho NWR boundaries to include relicted lands; and Title IV Section 401 the transfer of Fallon Naval Air Station Water rights among other parts.

We look forward to working with the Committee in refining the provisions of the legislation and its passage.

Tina Nappe
(702) 785-6106/329-6118

LAHONTAN VALLEY WETLANDS COALITION
P.O. BOX 50706, RENO, NEVADA, 89513

Comments on S.1554

TITLE III - WETLANDS PROTECTION

Sec. 301 (a). We support the provisions to authorize the Secretary to purchase water rights (WRs) and water righted lands and to transfer, hold, resell, or otherwise dispose of these to benefit wildlife areas. However, since two of the three primary wildlife areas do not strictly fit the descriptions in this section, we propose a language to clarify the wildlife areas which could receive water rights:

"...TO BENEFIT THE WETLANDS INCLUDING BUT NOT LIMITED TO THE STILLWATER NATIONAL WILDLIFE REFUGE (NWR)/WILDLIFE MANAGEMENT AREA (WMA), CARSON LAKE, AND THE FERNLEY, WMA."

Sec. 301 (b) (1). Our concern is that the eligibility criteria mentioned was intended to apply only to water rights purchased pursuant to public law 100-446, not to all subsequent acquisitions. We feel this section should be drafted based upon several premises. First, that the State of Nevada must be unfettered in carrying out its responsibilities through the State Engineer's Office, thereby recognizing State water law, a long standing Federal policy. Secondly, that while the Secretary has wetland preservation responsibilities, he will take no action in acquiring water for wetlands that will lead to a findings of jeopardy regarding the threatened or endangered fish of the Truckee River system. The fact that water rights are a private property right must be recognized in the equation. Due to the complicated nature and importance of developing an efficient process, we recommend the following, which is in concert with other provisions of S1554, whereby the negotiation process is provided to work out complicated issues:

"THE SECRETARY OF INTERIOR AND THE STATE OF NEVADA, WILL AFTER A PUBLIC PARTICIPATION PROCESS, TOGETHER DEVELOP A WATER RIGHT ACQUISITION PROGRAM FOR LAHONTAN VALLEY WETLANDS THAT RECOGNIZES THE INTERESTS AND RIGHTS OF ALL PARTIES."

We acknowledge when deliberations started that culminated in the Alpine Decree that wetlands as a natural resource were not considered so that their status under that Decree is clouded. We therefore recommend that Congress provide clarification and relief from the determinations within the Decree concerning the consumptive use penalties that apply to water right transfers within the Carson Division of the Newlands Project and specifically or wetland purposes.

The Decree set the duty of water for irrigatable project acreage at 3.5 af/a for bottomland and 4.5 af/a for benchland. It established a "consumptive use" duty of 2.99 af/a and also for transfers of water within the project for non-irrigation use. Because the wetlands, Carson Lake (pasture and Stillwater Wildlife Management Area (SWMA) are geographically at the lower end of the irrigation canals and drains beyond which there are no down stream user to be protected, the relief that Congress could provide is to exempt those wetlands from the "consumptive use" penalty and recognize their use of water as being for irrigation purposes, thereby removing the .51 to 1.51 af/a penalty in water right transactions.

Sec. 301 (b) (2). We support the provision for purchases of WRS from willing sellers and permission for the Secretary to target purchases. However, we believe the language, "in areas the Secretary deems to be most beneficial to such a purchase program..." to be too vague. We propose the following clarifying language:

TO ...."such a purchase program" add "FOR THE PURPOSES INCLUDING BUT NOT LIMITED TO RESOLVING TOXIC CONTAMINATION TO THE WETLANDS FROM IRRIGATION DRAINWATER OR PROJECT INDUCED GROUNDWATER AND IMPROVING EFFICIENCIES."

Sec. 301 (b) (4). We support the provision for water rights to be managed by the Secretary through the U.S. Fish & Wildlife Service (USF&WS) in cooperation with the State. Since only one State agency is involved with wildlife management, we suggest the following clarifying language:

Substitute "...THE NEVADA DEPARTMENT OF WILDLIFE" for "State."

Sec. 301 (c) (1). We support the provision authorizing the use of existing water transport systems.

We recommend the following changes: Strike out "Where available" and substitute "TO CARRY OUT THE PURPOSES OF THIS ACT."

Sec. 301 (c) (2). We support the provision requiring the Secretary to cover full operations and maintenance charges. These are not the only costs, however, in carrying out the provisions of the Title. We propose more inclusive language:

(The Secretary is authorized to) "REIMBURSE NON-FEDERAL ENTITIES ON AN ANNUAL OR LUMP-SUM BASIS FOR CUSTOMARY LAND-REHABILITATION COSTS FOREGONE OPERATION AND MAINTENANCE REVENUES, FOREGONE HYDRO-GENERATION REVENUES, AND/OR FOREGONE PROPERTY TAX RECEIPTS IN CARRYING OUT THE PROVISIONS OF THIS SECTION."

Sec. 301 (e). We support the provision which authorizes the appropriation of $16,000,000. Unfortunately, this amount is inadequate to support the historic average of 26,000 acres of wetlands. It is far short of the $50,000,000 estimated in the GAO report RCED-89-196, entitled National Wildlife Refuges: Continuing Problems with Incompatible Uses: Call for Bold Action, 9/8/89 as needed to acquire

WRS for the wetlands. The OCAP Record of Decision clearly indicates that the OCAP will drastically reduce Lahontan Valley Wetlands.

We request the Subcommittee to provide the full authorization needed. In addition to the $16,000,000 provided in the legislation, another $20,000,000 in federal funds will be required. With the $9,000,000 the State of Nevada is proposing to spend, depending upon $5,000,000 (vote) or $4,000,000 (settlement) and the $2,700,000 in federal funds either appropriated or planned to be appropriated, the full $50,000,000 will be available.

Sec. 302. We strongly support the provision requiring the Secretary to provide Congress with recommendations on transferring certain US Bureau of Reclamation withdrawn public lands to the USFWS as a permanent national wildlife refuge to be managed for fish and wildlife purposes in cooperation with the signatories of the 1948 Tripartite Agreement. We believe that the wildlife areas to be studied should be consistent with those identified in Sec. 301 (a), as follows:

"....withdrawn public lands INCLUDING BUT NOT LIMITED TO THE STILLWATER NWR/WMA, CARSON LAKE, AND THE FERNLEY WMA."

A new Section 303. REDEFINITION OF THE BOUNDARIES OF THE ANAHO ISLAND NWR. Since the establishment of the Anaho Island NWR, Pyramid Lake has dropped many feet. Lands not originally included in the NWR but which have been exposed by dropping Lake levels now provide the prime habitat for colonial nesters dependent on the island. We recommend a new section on requirements for adding the relicted lands to the NWR:

"WITHIN TWO YEARS OF THE DATE OF PASSAGE OF THIS ACT, THE SECRETARY SHALL PROVIDE CONGRESS WITH RECOMMENDATIONS CONCERNING THE REDEFINITION OF THE BOUNDARIES OF ANAHO ISLAND NWR TO INCLUDE ALL LANDS ABOVE WATERLINE."

TITLE IV - CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM.

Sec 401 (a). We recommend that "The Secretary of the Navy be instructed in consultation with and with the assistance of the Secretary of Interior, to develop and implement a water management plan designed to improve efficiency and reduce the amount of water required to manage the lands owned by the United States within the Naval Air Station at Fallon, Nevada." The water saved would then be made available to the fish and wildlife resources of the Truckee River and Lahontan Valley wetlands. The lands under the improved irrigation facilities offer an opportunity to reduce the need for developing new irrigated land within the Fallon Indian Reservation wherein toxic drain water is presently contributing to the degradation of the Stillwater Marsh. We suggest in addition to new wording noted above that lines 14-17 be replaced following the word "manner" as follows:

"THE TRUCKEE RIVER PORTION OF THE WATER RIGHTS APPURTENANT TO THOSE LANDS WHICH ARE NO LONGER NEEDED FOR DUST ABATEMENT OR FIRE-SAFETY REQUIREMENTS SHALL BE TRANSFERRED TO THE PYRAMID LAKE FISHERIES IN ACCORDANCE WITH STATE LAW. THE CARSON RIVER PORTION OF THE WATER RIGHTS APPURTENANT TO THOSE LAND WHICH ARE NO LONGER NEEDED FOR DUST ABATEMENT OR FIRE-SAFETY REQUIREMENTS SHALL BE TRANSFERRED TO THE LAHONTAN VALLEY WETLANDS IN ACCORDANCE WITH STATE LAW."

Sec. 402 (a) and (b). We strongly support the provisions directing the Secretary to revise and update plans for the recovery of the cui-ui and Lahontan cutthroat trout in a timely manner as well as specifying the criteria for developing the plans. We are dismayed that no funds were authorized to carry out the provisions of this section. Specific fund authorization for cui-ui recovery is one of our highest priorities in this legislation. We recommend the following language:

"THERE ARE HEREBY AUTHORIZED TO BE APPROPRIATED SUCH FUNDS AS ARE NECESSARY TO DEVELOP AND IMPLEMENT THE RECOVERY PROGRAM FOR THE CUI-UI AND LAHONTAN CUTTHROAT TROUT, INCLUDING BUT NOT LIMITED TO IMPLEMENTING THE LOWER TRUCKEE RIVER REHABILITATION PROJECT AND TO DEVELOPING DELTA ACCESS FACILITIES."*

*If elements of this title are funded through other legislation, we would have no objection to changes in our recommended language to reflect other funding sources.

TITLE V - PYRAMID LAKE DEVELOPMENT FUND

Sec. 501 (d). We are concerned about possible negative impacts of extensive economic development at Pyramid Lake to waterfowl habitat on Anaho Island dependent on existing relatively undeveloped conditions. We suggest the following language:

After "...manage or use..." add "AND THAT THE USE OF THESE FUNDS DO NOT ADVERSELY IMPACT THE COLONIAL NESTING SPECIES ON ANAHO ISLAND NWR."

TITLE VI - MISCELLANEOUS PROVISIONS

Sec. 602 (a) and (b). We are concerned that these provisions do not recognize the Federal ownership and management of the Anaho Island NWR. If the definition of "trust land within the Pyramid Lake Indian Reservation" includes the Anaho Island NWR, we recommend the following language:

Add to (a), "...Reservation EXCEPT FOR THE ANAHO ISLAND NWR.."
Add to (b), "...Reservation EXCEPT FOR THE ANAHO ISLAND NWR.."

Sec. 601 (c). We are concerned that this provision does not address the problem of severe toxic contamination of the wetlands from the TJ drain on the Fallon Reservation. We recommend the following language:

Add language such as "THE IMPLEMENTATION OF ANY AGREEMENT REACHED WITH THE FALLON PAIUTE-SHOSHONE TRIBE SHALL NOT HAVE SIGNIFICANT ADVERSE IMPACTS ON THE FISH AND WILDLIFE RESOURCES OF PYRAMID LAKE OR THE WETLANDS.

Sec. 602 (e). We are concerned that provisions requiring the Secretary, the Tribe, and the State of Nevada to negotiate an agreement determining permanent rights to store water for the benefit of the Tribe and Pyramid Lake Fishery in Stampede and Prosser Reservoirs be limited to benefiting the Pyramid Lake Fishery. We suggest the following deletion.

Delete "....the Tribe and..."

Revised 2/1/90

LAHONTAN VALLEY WETLANDS COALITION
P.O. BOX 50706, RENO, NEVADA 89513

CONTACT REPRESENTATIVES
February 6, 1990

Rose Strickland
Sierra Club, Toiyabe Chapter
619 Robinson Street
Reno, Nevada 89503
(702) 329-6118

Tina Nappe
LVWC
3340 Berthoud Street
Reno, Nevada 89503
(702) 747-1106 (h)
785-6106 (w)

Norm Saake
Nevada Waterfowl Association
%Nevada Department of Wildlife
380 West "B" Street
Fallon, Nevada 89406
(702) 423-3171 (w)

Fred Wright
Nevada Wildlife Federation
1122 Greenbrae Drive
Sparks, Nevada 89431
(702)358-2206

Ken Taber
Nevada Waterfowl Association
3460 Yosemite Place
Reno, Nevada 89503
(702) 747-6426 (h)
786-7718(w)

MEMBERS ORGANIZATIONS: Greenhead Club, Lahontan Audubon Society, Nevada Organization for Wildlife, Toiyabe Chapter of the Sierra Club, Friends of Pyramid Lake, Ducks Unlimited, Nevada Waterfowl Association, Nevada Wildlife Federation, The Wildnerness Society, Public Resource Associates, Ormsby Sportsmen Association, Environmental Defense Fund, Nevada Trappers Association, Defenders of Wildlife and The Canvasback Club.

Senator **Bradley**. Thank you for your testimony.
Mr. Harrison.

STATEMENT OF DAVID L. HARRISON, BOARD OF GOVERNORS, THE NATURE CONSERVANCY

Mr. **Harrison**. Thank you very much. I am David Harrison. I am one of The members of the Board of Governors of The Nature Conservancy. I also happen to be a water rights lawyer from Colorado, and I have been very interested and involved in The Nature Conservancy's water resources program around the west, of which probably the most interesting thing going on right now for us is the Stillwater Wildlife Refuge situation.

I want to thank the committee, and you, Mr. Chairman, for the opportunity to testify here in this respect. The Nature Conservancy has worked in partnership with the Federal Government, particularly the Fish and Wildlife Service, for a long time and in a lot of places trying to solve particular problems, usually by acquiring the land. We have been involved in this case, trying to help acquire water rights, the kind of thing that both David Yardas and Tina have just now mentioned. We are currently actively involved in trying to help invest the $2.1 million that Congress has previously up to now appropriated for the Stillwater water rights acquisition program, and we in fact have two cases pending in the Nevada State Engineer's office for transfer approval to the wetlands.

By the way, those have had some protest. We have been trying to get those worked out, and I want to announce right off the bat that the protests of TCID to those pending transfers has been resolved. It is a first step. I want to thank them for that, and I want to reemphasize our commitment in the deal. The issue that I want to touch on, has to do with the continuing obligation of the United States to make its operations and maintenance assessment payments. And the issue for TCID was to be sure that the United States would continue to be making those payments, given the fact that Congress would have to make an annual appropriation.

We have simply agreed with TCID for now. And if we can't resolve it in the first two transfers, but we will work as hard as we can to try to come up with the solution of that. And I think, in view of what you have said, Mr. Chairman, about the 90 day period of time to try to get some of these issues resolved so we can get them in the bill, I think that the O&M charge is one of those issues, and we certainly will work as hard as we can to try to bring that to closure.

I just might throw out that one of the things that has been talked about a little bit is the idea of the repayment obligation, the remaining repayment obligation that TCID has. That is touched on in Congresswoman Vucanovich's bill. She mentions that, and I think that that may be one of the things we will have to look at in trying to reach a resolution. There may be others, I don't know what it will be, but we are willing to go after it.

I want to say that we have a near term goal. We have got a problem this summer. You have heard there is a drought, the third year of drought. A lot of us are worried about what is going to happen in the wetlands this year. And if we can get these transfers accelerated that are pending right now, based on the $2.1 miliion currently appropriated, we think we can get something like 4,000 acre-feet into the wetland this summer. We would like to try to get that done on an emergency basis.

We do have a couple of fine tuning amendments that we will be suggesting. Tina has mentioned one of the areas, the eligibility criteria. We agree that those need to be broadened and made somewhat more flexible. We have got a bit of a problem here. You have got, the Federal agencies have got to find a way to pick the right water rights consistent with Federal law, Endangered Species Act and other Federal law, and yet the water rights themselves need to be transferred under State law. And so we have proposed some language to try to balance that. I imagine there may be more ideas on that before it is done.

It is important, we think, to authorize the Federal agencies to acquire the full bulk of water rights on any particular farm, even if some part of it may end up not being transferable, or transferable now, because the deals have to be practical deals that can be made with the real people, with the farmers on the ground. There are cases, we suspect, in which land will have to be acquired. The farmer would not be willing in certain circumstances to sell the water and not the land. The authority to acquire land needs to be included.

But I think these are fine points, and I think that they can be built into this legislation and make it very practical to proceed with a private marketplace approach to resolving the water rights acquisition component.

And finally, let me just reaffirm our commitment to stay available and to keep working and try to help implement that aspect of it.

[The prepared statement of Mr. Harrison follows:]

Statement of

David L. Harrison
The Nature Conservancy

on the

Truckee-Carson-Pyramid Lake
Water Rights Settlement Act

(S. 1554)

before the

Subcommittee on Water and Power
Energy and Natural Resources Committee
United States Senate

February 6, 1990

Mr. Chairman and members of the subcommittee: I am David Harrison, the immediate past chairman and a member of the executive committee for the national Board of Governors of The Nature Conservancy. I am also a water attorney from Colorado. The Nature Conservancy is an international organization with over 500,000 members that is dedicated to the identification and protection of our endangered natural heritage. Since 1953, we have helped protect almost 4 million acres, about half in cooperation with government agencies.

During the last two years, I have worked with our Great Basin Field Office to assist the U.S. Fish and Wildlife Service to purchase or put under contract about $2.1 million worth of Newlands Project water rights for transfer to the Stillwater National Refuge and Management Area pursuant to appropriations approved in the last two Congresses.[1] The Conservancy has also filed two applications seeking the Nevada State Engineer's approval of the transfers of the first several water rights from Newlands Project farms to the Stillwater Marsh. Our capital will remain at risk until those transfers are approved.

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[1] Newlands Project water rights are generally considered to be the best market for acquiring water rights for the Stillwater Marsh. The Marsh is considered by the Department of Interior to be part of the Newlands Project; the price for Newlands Project water rights is orders of magnitude less than it is in the Reno/Sparks or Carson City areas; and while there are a number of problems that must be addressed in transferring such water rights to the Stillwater Marsh, such problems pale in comparison to those involved in moving other water rights down from higher up in either the Truckee or Carson river systems.

Together with the U.S. Fish and Wildlife Service, and with strong cooperation from the Truckee Carson Irrigation District and the Pyramid Lake Tribe, we could be in a position to deliver over 4,000 acre feet of prime Newlands Project water to the Stillwater Marsh during the next irrigation season.

The bill before you is indeed complex. We would like to encourage and support its marketplace approach to mitigating the wetland impacts of bringing the Operating Criteria and Procedure (OCAP) for the Newlands Project into compliance with the Endangered Species Act. We think this is a viable solution that could avoid a painful choice between protecting the Lahontan Valley wetlands, and protecting the endangered fish at Pyramid Lake. It is a solution that is consistent with the private water rights held by Newlands Project farmers. It is a solution that has worked over and over again for The Nature Conservancy.

But though it may be a way to avoid the painful choice between the wetlands and the endangered fish without trampling private water rights, this market strategy is not necessarily easy. The Newlands Project water rights market is a formidable challenge for us, and I would like to share some of the basic problems that we have encountered with our initial work in that market and to suggest to you some language for Section 301 of S.1554 to address those problems.

The first and perhaps the most important problem that we have encountered is that there is considerable controversy surrounding the nature and extent of the individual water rights within the Newlands Project. The general adjudication decrees for the Carson and Truckee river systems only established a water right to divert and store water for the whole project and set certain water duties per acre of irrigation, but the exact acreage within individual ownerships which carries a part of the project water right has never been adjudicated and remains somewhat uncertain.

For example, there are over 73,000 water righted acres within the Newlands Project, but the initial baseline acreage for the OCAP included only 60,300 acres that were both water righted and planned for irrigation in 1987. The total amount of acreage that was water righted and actually irrigated in 1987, and in several years before that, appears to be less than 60,300 acres. It also appears that over 3,000 of those 60,300 acres have been water righted by virtue of a series of water right transfers that are still embroiled in litigation over whether the transferred water rights had been abandoned, forfeited or ever perfected.

Finally, the adopted OCAP contemplates an increase in project acreage from a 60,300 acre baseline in 1987 to 64,850 acres by 1992 and much of this increased acreage could be water righted and become eligible to receive project water under the OCAP through transfers that are sure to draw a protest, at least until the litigation that I mentioned is resolved. The bill before you does not attempt to resolve such litigation.

On the otherhand, the U.S. Fish and Wildlife Service has taken the position that no more than 64,850 acres can be irrigated in the Newlands Project, assuming all other things remain unchanged, without jeopardizing the endangered cui-ui. The Pyramid Lake Tribe argues that even further limits on Newland Project diversions from the Truckee River may be necessary if the cui-ui is to be recovered pursuant to the Endangered Species Act. Because of the litigation surrounding the water righting of acreage that is eligible to receive Newlands Project water under the OCAP, and because it is possible for more than the 64,850 acres to become eligible for water service under the OCAP, it may not enough be to limit the purchase and transfer of Newlands Project water rights to those that are eligible to receive water under the OCAP. Our experience is that more conservative criteria are needed to avoid controversy under the Endangered Species Act.

For the $1.2 million appropriated under P.L. 100-446, we were able to avoid controversy over water right transfers to the wetlands by limiting such transfers to acreage that was included in the 1987 OCAP baseline, but was not water righted by virtue of a prior transfer that is now in litigation. But because the 1987 OCAP baseline reflects what was planned to be irrigated that year, and not what was actually irrigated, we have found that it is cumbersome to verify what acreage meets that criteria. This criteria has also been criticized because it is based on a single year, and may arbitrarily exclude acreage that was legitimately irrigated in other years.

We are now actively discussing some broader, more flexible criteria based on the Bureau of Reclamation's comprehensive aerial and satellite imagery of actual irrigation in the Newlands Project over the past several years, and are hopeful that such broader criteria can be substituted for the purchases made with the $1.2 million appropriation under P.L. 100-446, and the $1.5 million appropriation under P.L. 101-121. We offer language for S.1554 which would at least cover the broader criteria that we are now discussing, and which will be more flexible and easier to apply in the marketplace.[2]

Once such criteria are applied, however, there is a market problem that goes beyond the flexibility of the criteria and the ease with which they can be applied. Our experience with the criteria based on the 1987 OCAP baseline was that most Newlands Project farms will have some non-qualifying acreage mixed in and we anticipate that this problem will persist with even the broader and more flexible criteria that we are discussing now. The problem is that there is little market for just the acreage that qualifies under such criteria and we have found that we must purchase the water rights for an entire farm to control what does qualify and often must buy the land too. There is also an issue of whether the full irrigation duty for even qualifying acreage can be transferred to Lahontan Valley wetlands without protracted litigation.

So we believe that the bill should not preclude the transfer of a substantial portion of purchased water rights to the wetlands at one time, and the holding of a small balance for possible later transfer. It also seems advisable to permit the disposal of water rights that must be purchased as a practical matter but do not qualify for transfer to Lahontan Valley wetlands. We recognize that there is a concern about permitting the transfer of even such small leftover water rights out of the Lahontan Valley. This concern could be addressed by limiting such disposals to re-sales to other farms or municipalities within the Lahontan Valley.

The same flexibility is needed for the disposal of land, when the land must be purchased in order to purchase water rights, and exchanges of such residual land with other federal property should be authorized. Any proceeds from the disposal of either non-qualifying water rights or residual land should be plowed back into the water rights acquisition program for the wetlands.

The last major obstacle that we have encountered concerns the federal payment of the operation and maintenance charges that the Truckee Carson Irrigation District will levy each year on any Newlands Project water rights that are purchased for transfer to the wetlands. While Newlands Project water rights are in private hands, the O&M charges are collected with real property taxes and the payment of the O&M charges to the District can be secured by a tax lien on the land underlying the water rights. The District has been concerned that once such water rights go into federal ownership, it will no longer be possible to secure the O&M payments with a tax lien, and those payments will be subject to year to year congressional appropriations.

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[2] Such criteria would only apply to the federal program to transfer Newlands Project water rights to Lahontan Valley wetlands, and would not affect the transfer of such water rights from farm to farm or from farms to the towns within the project area.

The District protested our first wetlands transfer on the grounds that this insecurity over O&M payments was a violation of Nevada water law. I am pleased to report that we have resolved that protest by agreeing to work together to secure the O&M payments. We therefore support the District's effort to obtain such security for the O&M payments on any Newlands Project water rights whose purchase and transfer is authorized by S.1554.

I want to briefly address two concerns that do not relate so much to our market experience to date. First, the Conservancy anticipates that the purchase of Newlands Project water rights for transfer to Lahontan Valley wetlands will benefit the Lahontan Valley both environmentally and economically. Nevertheless, we support the plans of the U.S. Fish and Wildlife Service to undertake a study of the socio-economic impact on the local community of transferring such water rights to the wetlands. But putting off any water right transfers for the wetlands until such a study is completed will prolong the de-watering of the wetlands and will pile up the losses there. A balance might be reached by directing that the socio-economic study be completed by the end of the first or second year of the wetlands water rights program authorized by this bill.

Second, we are concerned that the $16 million appropriation authorized for wetlands water rights, though generous, may not be enough to mitigate OCAP impacts. At $800 per acre foot, which is a high price now but which might be anticipated, the purchase of only 20,000 acre feet is authorized by this bill. Several analyses indicate that more than twice that amount of water will be needed, and as I have noted, it may not be possible to transfer all of the water that is purchased. The Conservancy therefore supports the $16 million authorization as an absolute minimum and as perhaps the first of a two phase program. Alternative funding mechanisms could be explored for the second phase.

In conclusion, the Conservancy wishes to recommend the marketplace approach to the protection of wetlands that S.1554 would authorize. Though not without its difficulties, it appears to be a feasible and preferred approach to saving the Lahontan Valley wetlands, without risking the endangered fish at Pyramid Lake.

TITLE III --- WETLANDS PROTECTION

SECTION 301 AUTHORIZATION TO PURCHASE WATER RIGHTS

(a) IN GENERAL -- The Secretary is authorized to purchase water rights, with or without the lands to which they are appurtenant, for the sole benefit of federal and state wildlife areas in the Lahontan Valley and the Fernely Sink in Nevada. All water rights and lands shall be purchased from willing sellers.

(b) SELECTION AND TRANSFER OF PURCHASED WATER RIGHTS -- The U.S. Fish and Wildlife Service shall select from any water rights purchased pursuant to this section, those water rights or portions thereof, if not all, that can be transferred to the wildlife areas and wetlands described in subsection a) consistent with the Endangered Species Act and other applicable federal law. The U.S. Fish and Wildlife Service shall make any such selection in consultation with the U.S. Bureau of Reclamation and the Nevada Department of Wildlife. Those water rights or portions thereof, if not all, which the Secretary selects for such transfer shall then be transferred to such wildlife areas and wetlands in accordance with applicable court decrees and state law, and shall be used to apply water directly to such wildlife areas and wetlands. No water rights shall be purchased, however, unless the U.S. Fish and Wildlife Service determines that the water rights can be so transferred and applied to direct use to a substantial degree.

(c) MANAGEMENT OF PURCHASED WATER RIGHTS AND LANDS -- All water rights purchased pursuant to this section shall be managed by the U.S. Fish and Wildlife Service in cooperation with the Nevada Department of Wildlife. Any lands purchased or any water rights purchased but not transferred to the wildlife areas and wetlands described in subsection a) may be held, transferred, exchanged or otherwise disposed of to benefit such wildlife areas and wetlands.

(d) SOCIO-ECONOMIC STUDY -- By the close of fiscal year 1992, the Secretary shall perform a study and report on the potential adverse and beneficial social, economic and environmental effects of the water rights purchase program authorized by this section on the Newlands Project area.

(e) DELIVERY SYSTEMS -- The Secretary is authorized to use existing water diversion, storage, and conveyance systems where available to deliver water to the wildlife areas and wetlands described in subsection a) under any water rights purchased and transferred pursuant to this section.

(f) OPERATION AND MAINTENANCE CHARGES -- The Secretary shall reimburse the Truckee Carson Irrigation District for all operation and maintenance charges on any Newlands Project water rights purchased or transferred pursuant to this section, the same as if such water rights were still appurtenant to agricultural land within the District.

(g) CONSTRUCTION OF THE SECTION -- The federal water purchase program authorized in this section is specific to this section and shall not be construed as a precedent in determining Federal responsibilities toward other wildlife areas or wetlands.

(h) AUTHORIZATION -- There are hereby authorized to be appropriated to carry out the provisions of this section $4,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994.

Senator BRADLEY. One of the things that I would like to know is how can we accelerate the transfer this year?

Mr. HARRISON. I don't know that it is your job to accelerate it. I think it is ours. What we have had to do so far to try to work out interim agreements with the parties to alleviate the protests so that we can go ahead and get state engineer approval of the transfers.

Senator BRADLEY. Okay. Let me thank the panel very much for your testimony, and I appreciate the seriousness that you took in providing it for the subcommittee. Thank you very much.

Our next panel consists of Mr. Dell Steve, Vice Chairman of the Fallon Paiute-Shoshone Tribe.

Welcome to the subcommittee, Mr. Steve.

STATEMENT OF DELL STEVE, VICE CHAIRMAN, FALLON PAIUTE-SHOSHONE TRIBES, ACCOMPANIED BY ALVIN MOYLE, COUNSELPERSON; AND STEVE CHESTNUT, TRIBAL ATTORNEY

Mr. STEVE. With me is my counselperson and the past tribal chairman, Alvin Moyle. Also, our tribal attorney, Steve Chestnut.

Chairman Bradley, I am Dell Steve, Vice-Chairman of Fallon Paiute-Shoshone Tribe. I appear to present the views of the Fallon Tribe on S. 1554. We greatly appreciate this opportunity and the courtesies extended to us by the subcommittee and the staff. In addition, we want to thank the bill sponsor, Senator Reid, and his staff, for their interest and hard work. We are also grateful for the efforts of Representative Vucanovich and her staff in preparing the House bill.

Our tribe occupies the Fallon Indian reservation, 8,020 acres of trust land in the Lahontan Valley. 5,440 acres are water-righted. At the turn of the century we held more than 31,000 water-righted acres in the valley. These lands are within the area planned to be served by the Newlands project and were among the valley's best agricultural lands. The reclamation service insisted that the Newlands project would not be extended to our lands if they remained in Indian ownership. The service urged that our lands and waters instead be made available to non-Indian homesteaders. If our lands remained in Indian hands the service vowed the project would bypass them.

In 1906 we were forced to relinquish all but 4,640 acres of our 31,000 acres. The government assured us that the retained lands would be irrigable and that would enable us to fully utilize those lands and our water rights. The Newlands project facilities would be extended to them at no charge. We were told that these were the only terms under which we would receive water, and if we did not agree we would lose all of our lands and water rights.

Although we agreed under these difficult circumstances to relinquish 27,000 acres, 87 percent of our land base, the government failed to honor its commitments under the 1906 agreement. Most of the retained 4,640 acres were not irrigatable. Most were never served by the project facilities, and those facilities which were provided were poorly constructed and inadequately maintained.

For more than 80 years we have awaited a remedy for these injustices. In 1978 we thought we had a remedy from Congress. In recognition of the profound inequities we were suffering, Congress enacted Public Law 95-337. The act added 2,640 acres to our reservation, to make up for the poor quality of the lands we were relegated to in 1906. The act also directed the Secretary of the Interior as his first priority to upgrade the irrigation system on the original reservation, to extend the system to the added lands, and to bring 1,800 acres of added lands into cultivation.

Today, many years after Congress's 1978 directive, the government's commitments to the tribe remain unfulfilled. Major work remains on the required upgrading of the irrigation system on the original reservation. Even less progress has been made on the added lands. All work ground to a halt several years ago.

Notwithstanding Congress's mandate, the Secretary has behaved as if he had no duties under the 1978 act. His attorneys at the Justice Department brazenly assert the act will never be implemented. As implementation of the act is denied, the unused waters of the Fallon tribe continue to flow into Pyramid Lake. The tribes water right under the 1906 agreement and the 1978 act are now threatened by larger, more powerful interests in the region.

We are gravely concerned about S. 1554 as introduced. Our tribe was excluded from the negotiations which gave rise to the bill. The only provision in the bill addressing our interests, section 601(c), was drafted by us on the eve of the bills introduction, and when we were deprived of knowledge of the bills remaining provisions. In its current form S. 1554 jeopardizes fundamental rights and interests of the Fallon Tribe. This was predictable, since the parties who developed the bill, the Pyramid Lake Tribe, Sierra Pacific Power Company, California, Nevada, and the Secretary, were not concerned with our interests.

We seek adjustments in the bill to prevent it from damaging our rights, and to include settlement of all claims under the 1906 agreement and the 1978 act in the bill. We fear that if such adjustments are not made S. 1554 will re-enact the historical injustice which occurred in 1906 when our land and our water rights were sacrificed to accommodate much more powerful interests in the region. No matter how compelling the goals of S. 1554 may be, there is no moral justification for not adjusting the bill to preserve the few rights we managed to salvage in 1906.

Senator BRADLEY. Mr. Steve, could you summarize? How much more do you have in your prepared testimony?

Mr. STEVE. All right, we will speed it up. Now, Senator Reid has been responsive to this last concern by a letter dated February 1, 1990. He advised us, I quote, "I believe that by far the best approach would be for the tribe to make every effort to have language included in S. 1554 settling the tribe's outstanding claims. If the tribe can reach agreement with the Chairman of the Senate Select Committee on Indian Affairs, and an appropriate settlement, I will do everything in my power to see that the settlement is enacted as part of S. 1554."

We understand that Senator Bradley holds a similar view. We deeply appreciate these positions. They are consistent with the commitment that this legislation, as a regional water settlement, will at long last bring justice to the Fallon Tribe. We will work promptly, diligently, in good faith with Senator Inouye, Senator Reid, and the subcommittee to develop these provisions.

The Fallon Tribe's resources and political clout pale in comparison to those of parties who shaped S. 1554. Unless Congress recognizes there are also responsibilities to the Fallon Tribe, our precious remaining rights will be prejudiced and further diminished. We are heartened that this subcommittee and Senator Reid appreciate the need to finally provide justice to our tribe.

Thank you for this opportunity to speak about the need on behalf of our tribe. I want to thank you very much. If you have any questions I have some help here.

[The prepared statement of Mr. Steve follows:]

STATEMENT OF FALLON PAIUTE-SHOSHONE TRIBES ON S.1554

HEARING BEFORE THE SUBCOMMITTEE ON WATER AND POWER OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

February 6, 1990

I am Dell Steve, Vice-Chairman of the Fallon Paiute-Shoshone Tribes. I appear to present the views of the Fallon Tribe on S.1554. We greatly appreciate this opportunity, and the courtesies extended to us by this Subcommittee and its staff. In addition, we want to thank the Bill's sponsor, Senator Reid, and his staff for their interest, concern and hard work. We are also grateful for the efforts of Representative Vucanovich and her staff in preparing the House Bill.

Our Tribe occupies the Fallon Indian Reservation, which today comprises 8,020 acres of trust land in the Lahontan Valley.[1] 5,440 acres of these lands are water-righted. At the turn of the century, however, we held more than 31,000 water-righted acres in the Valley. These lands were within the area planned to be served by the Newlands Project and were among the Valley's best agricultural lands.

The Reclamation Service insisted that under no circumstances would the Newlands Project be extended to our lands if they remained in Indian ownership. The Service urged that our lands and waters instead be made available to non-Indian homesteaders. If our lands remained in Indian hands, the Service vowed the Project would bypass them.

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[1] We have a resident Indian population of 758. 35% of our available labor force is unemployed (5 times the county rate). 22% of our employed earn less than $7,000 per year, and our average family income is vastly lower than off-Reservation averages.

In 1906 we were forced to relinquish all but 4,640 acres of our 31,000 acres. The Government assured us that the retained 4,640 acres would be irrigable, and that, to enable us to fully utilize those lands and our water rights, the Newlands Project facilities would be extended to them at no charge. We were told that these were the only terms under which we would ever receive water, and that if we did not agree, we would lose all of our lands and water rights.

Although we agreed under these difficult circumstances to relinquish some 27,000 acres -- 87 percent of our land base -- the Government failed to honor its commitments under the 1906 Agreement. Most of the retained 4,640 acres were not irrigable, most were never served by Project facilities, and those facilities which were provided were poorly constructed and inadequately maintained. For more than 80 years we have awaited a remedy for these injustices.

In 1978, we thought we had a remedy from Congress. In recognition of the profound inequities we were suffering, Congress enacted PL 95-337. The Act added 2,640 acres to our Reservation, to make up for the poor quality of the lands we were relegated to in 1906. The Act also directed the Secretary of the Interior as his "first priority" to upgrade the irrigation system on the original Reservation; to extend the system to the added lands; and to bring 1,800 acres of the added lands into cultivation.

Today, many years after Congress' 1978 directive, the Government's commitments to the Tribe remain unfulfilled. Major work remains on the required upgrading of the irrigation system on the original Reservation. Even less progress has been made on the added lands. All work ground to a halt several years ago.

Notwithstanding Congress' mandate, the Secretary behaves as if he has no duties under the 1978 Act. His attorneys at the Justice Department brazenly assert the Act will never be implemented. As implementation of the Act is thwarted, the unused waters of the Fallon Tribe continue to flow into Pyramid Lake.[2]

The Tribe's rights under the 1906 Agreement and the 1978 Act are now threatened by larger, more powerful interests in the region. We are gravely concerned about S.1554 as introduced. Our Tribe was excluded from the negotiations which gave rise to the Bill. The only provision in the Bill addressing our interests -- §601(c) -- was drafted by us on the eve of the Bill's introduction, when we were deprived of knowledge of the Bill's remaining provisions.

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[2] Recently, concern over drain water quality has been cited as a justification for not extending irrigation to the lands added to our Reservation in 1978. However, studies are now underway to determine the source and extent of the contaminants, which are not yet fully known. Any adverse environmental impact should be transitory and can (and should) be mitigated. Notably, this concern provides no justification for the failure to upgrade (and make more efficient) the Reservation's existing irrigation system.

In its current form, S. 1554 jeopardizes fundamental rights and interests of the Fallon Tribe. This was predictable since the parties who developed the Bill -- the Pyramid Lake Tribe, Sierra Pacific Power Co., California, Nevada, and the Secretary -- were either antagonistic or oblivious to our interests.

We seek adjustments in the Bill to prevent it from damaging our water rights, and to include settlement of our claims under the 1906 Agreement and the 1978 Act in the Bill. We fear that if such adjustments are not made, S.1554 will re-enact the historical injustice which occurred in 1906, when our lands and water rights were sacrificed to accommodate much more powerful interests in the region. However compelling the goals of S.1554 may be, there is no moral justification for not adjusting the Bill to preserve the few rights we managed to salvage in 1906.

Last month, in meetings with representatives of this Subcommittee, Senator Reid's office, and the Bureau of Indian Affairs, Bureau of Reclamation and Fish and Wildlife Service, we presented amendments to the Bill which we had prepared (Exhibit B) and urged their adoption. Our amendments do not conflict with the professed purposes of the legislation. In summary, our amendments would:

(1) give force to repeated statements that the Bill does not impair the Fallon Tribe's water rights;

(2) reduce the very real potential that the Bill will foster new, intensified attacks by the Pyramid Tribe on the Fallon Tribe and the Newlands Project (which supplies water to the Fallon Reservation);

(3) recognize that Fallon Reservation wetlands also suffer damage from OCAP which have restricted water deliveries to the Lahontan Valley, and include Fallon Reservation wetlands in the Bill's mitigation programs;

(4) assure that high priority will be given to funding the recovery of the Pyramid Lake Fishery; and

(5) assure that the fulfillment of the United States' long-standing obligations to the Fallon Tribe are made integral to the regional water settlement.

Senator Reid has been particularly responsive to this last concern. By letter dated February 1, 1990, he advised us:

> I believe that by far the best approach would be for the Tribe to make every effort to have language included in S.1554 settling the Tribe's outstanding claims. If the Tribe can reach agreement with the Chairman of the Senate Select Committee on Indian Affairs on an appropriate settlement, I will do everything in my power to see that the settlement is enacted as part of S.1554. (See Exhibit A.)

We understand that Senator Bradley holds a similar view. We deeply appreciate these positions. They are consistent with the commitment that this legislation, as a regional water settlement, will at long last bring justice to the Fallon Tribe. We will work promptly, diligently and in good faith with Senator Inouye, Senator Reid, and this Subcommittee to develop such provisions.[3]

We remain very concerned, however, that other provisions in the Bill as introduced will impair our water rights, foster intensified legal attacks on our rights, exclude our wetlands from the Bill's wetlands mitigation program, and provide insufficient funding to achieve recovery of the Pyramid Lake Fishery.[4] We would like to work closely with the Subcommittee, Senator Reid, and their staffs, to address these continuing concerns. We appreciate Senator Reid's expressed willingness to address our legitimate concerns in these areas, and we believe that this Subcommittee will be equally receptive.

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[3] If such provisions are added to the Bill, they would supplant the language in our proposed section 601(c) (see Exhibit B, pp. 35-36), which directs negotiations between the Fallon Tribe and the Secretary, and our proposal (see section 603, Exhibit B, p. 40) that various provisions of the Bill would not be effective until we reached agreement with the Secretary.

[4] See Exhibit C for a more detailed explanation of these concerns.

Our proposed amendments include language which would address these matters. Of particular importance are proposed "savings" clauses, to insure that the Bill does not impair our water rights or our legal position in on-going or new water litigation. The existing "savings" clauses fail adequately to provide such fundamental protections.[5] We urge that the Bill be revised to include such language.

The Fallon Tribe's resources and political clout pale in comparison to those of the parties who shaped S.1554. Unless Congress recognizes there are also responsibilities to the Fallon Tribe, our precious remaining rights will be prejudiced and further diminished. We are heartened that this Subcommittee and Senator Reid appreciate the need to protect and finally provide justice to our Tribe. Thank you for this opportunity to speak about that need on behalf of our Tribe.

* * * *

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[5] _See_ Exhibit C, Part A.

HARRY REID
NEVADA

United States Senate
WASHINGTON, DC 20510

February 1, 1990

Merlyn Dixon
Chairman
Fallon Paiute-Shoshone Tribes
8955 Mission Road
Fallon, Nevada 89406

Dear Chairman Dixon:

I am writing to follow up on the recent meeting in my office in Washington where possible approaches to settling the Tribe's outstanding claims against the federal government, including those related to Public Law 95-337, were discussed.

As stated in the meeting, I believe that by far the best approach would be for the Tribe to make every effort to have language included in S. 1554 settling the Tribe's outstanding claims. If the Tribe can reach agreement with the Chairman of the Senate Select Committee on Indian Affairs on an appropriate settlement, I will do everything in my power to see that the settlement is enacted as part of S. 1554. However, there are very real time constraints facing us. I am committed to enacting S. 1554 this year and that means there is limited time to reach agreement. I do believe that there is sufficient time to get the job done and I will be glad to do what I can to expedite the process. The most important thing at this time is for you to contact Chairman Inouye as soon as possible and indicate that you will provide the Committee with your proposal in the very near future.

I hope that you find this approach acceptable. It will be a good day for us all when the Tribe's claims are fairly settled.

With best wishes,

Sincerely,

Harry Reid

HARRY REID
United States Senator

HMR:wm

EXHIBIT A

FALLON PAIUTE-SHOSHONE TRIBES'
Proposed Amendments
Revised January 19, 1990

101ST CONGRESS
1ST SESSION
S.1554

To ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, *the Fallon Paiute-Shoshone Tribes,* the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, JANUARY 3), 1989

Mr. REID introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, *the Fallon Paiute-Shoshone Tribes,* the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act".

EXHIBIT B

SEC. 2. FINDINGS ~~AND UNDERSTANDINGS~~.

The Congress finds that this Act ~~and associated agreements~~--

(1) furthers the goals of the Endangered Species Act as concerns species dependent upon water from the Truckee ~~and Carson~~ Rivers;

(2) ~~are~~ is consistent with Federal goals to protect valuable national wetlands from further environmental degradation and protect the habitat of many species of wildlife dependent upon these wetlands;

(3) provides for settlement of outstanding claims against the Federal Government and State governments and helps to end decades of litigation;

(4) provides for the equitable apportionment of the waters of Lake Tahoe and the Truckee and Carson Rivers to promote intergovernmental cooperation and comity between the States of California and Nevada and to provide certainty to the administration of their respective water rights laws;

(5) helps to reduce the effects of drought conditions on the citizens of western Nevada; and

(6) provides water for the citizens of California for their use within the Carson, Tahoe, and Truckee Basins.

SEC.3.DEFINITIONS.

For purposes of this Act--

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(1) the term "Secretary" means the Secretary of the Interior;

(2) the term "*Pyramid* Tribe" means the Pyramid Lake Paiute Tribe;

(3) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribes;

~~(3)~~ *(4)* the term "Preliminary Settlement Agreement" means the agreement signed by the *Pyramid* Tribe and Sierra Pacific Power Company on May 23, 1989;

~~(4)~~ *(5)* the term "Operating Agreement" means the agreement described on page 24, paragraph (f) of the Preliminary Settlement Agreement;

~~(5)~~ *(6)* the term "Lower Truckee River" means the Truckee River below Derby Dam;

~~(6)~~ *(7)* the term "Alpine Decree" means the final decree *entered October 28, 1980, by* ~~of~~ the United States District Court for the District of Nevada in United States of America v. Alpine Land and Reservoir Company, Civil No. D-183~~, entered December 18, 1980, and any supplements thereto~~;

~~(7)~~ *(8)* the term "Orr Ditch Decree" means the decree *entered September 18, 1944, by* ~~of~~ the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al.--in Equity, Docket No. A3;

EXHIBIT B

~~(8)~~*(9)* the term "Orr Ditch Court" means the court having ~~continuous~~ *continuing* jurisdiction over the Orr Ditch Decree;

~~(9)~~*(10)* the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River ~~and is incorporated in the Orr Ditch decree~~;

~~(10)~~*(11)* the term "Pyramid Lake Fishery" means the two primary species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan Cutthroat trout (Salmo clarki henshawi);

~~(11)~~*(12)* the term "Lake Tahoe Basin" means the drainage area naturally tributary to Lake Tahoe, including the Lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East Mount Diablo Base and Meridian;

~~(12)~~*(13)* the term "Truckee River Basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that Lake, but excluding the Lake Tahoe Basin;

EXHIBIT B

~~(13)~~*(14)* the term "Carson River Basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humbolt River drainage area;

~~(14)~~*(15)* the term "Federal Water Master" means the individual appointed by the United States District Court of Nevada to carry out and enforce the provisions of the Orr Ditch Decree and the instructions and orders of the Court pertaining to the decree;

~~(15)~~*(16)* the term "Truckee River General Electric Decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in United States of America v. Truckee River General Electric Co., No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643; ~~and~~

~~(16)~~*(17)* the term "Truckee River General Electric Court" means the Court having continuing jurisdiction over the Truckee River General Electric Decree~~.~~*; and*

(18) the term "Newlands Project" means the project authorized pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 395 et seq.) for reclamation and irrigation of land in the Carson and Truckee River basins.

EXHIBIT B

TITLE I--INTERSTATE WATER APPORTIONMENT PROVISIONS *

SEC. 101. THE CARSON RIVER.

(a) CONFIRMATION OF COURT ALLOCATION.--The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine Decree is confirmed.

(b) FURTHER ALLOCATIONS.--(1) In addition to the allocations referred to in subsection (a), the States of California and Nevada are further allocated sufficient water from the Carson River and its tributaries to serve beneficial uses which are not encompassed in the Alpine Decree and were initiated prior to the effective date of this Act. The total amount of water allocated by this subsection shall not exceed one thousand five hundred acres-feet per annum by depletion for use in California and two thousand one hundred and thirty-one acre-feet per annum by depletion for use in Nevada.

(2) RIGHT TO COMPENSATION FOR DISCONTINUANCE.--If all or any portion of the effluent imported from the Lake Tahoe Basin into the watershed of the Carson River in California on or after the effective date of this Act is discontinued by reason of the disposal of such effluent, including underground disposal, within the Truckee River Basin or the Lake Tahoe Basin, the allocation to California of the

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* [Note: Title I, secs. 101-109, contains the revised language negotiated by California and Nevada. The Fallon Tribe requests only two changes in that language: the inclusion of the Fallon Tribe among the parties listed in sec. 103(a)(2); and a broader savings provision in sec. 103(d). If changes are made in the language negotiated by the two states, in light of objections by the Pyramid Tribe or others, the Fallon Tribe will submit additional comments if necessary.]

EXHIBIT B

waters of the Carson River and its tributaries for use in California shall be augmented by an amount of water, not to exceed 2000 acre-feet per year, which may be diverted to storage until rotation occurs under provisions of the Alpine Decree, which will compensate California for any such discontinuance; Provided, That any such augmentation shall be for use only on lands to which rights decreed by the Alpine Decree are appurtenant: Provided further, that nothing in this Act shall be construed to prohibit the continued use of all or any portion of such effluent on lands within California.

(c) STUDIES OF CONJUNCTIVE USE. -- Nothing in this Act shall foreclose the right of either state to study, either jointly or severally, the appropriation of unappropriated water which would otherwise be lost to beneficial use, including use on federally owned or operated wildlife refuges within the Carson River system, to enable conjunctive use of ground water.

(d) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA - Nothing in this Act precludes the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the Carson River Basin, provided that such storage facilities shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(e) This Act:

(1) recognizes and confirms the right to change the beneficial use of water from irrigation to storage for

EXHIBIT B

municipal and industrial uses: Provided, That such changes are in accordance with the Alpine Decree,

(2) permits water stored under this procedure to be diverted to storage in a given year and held for use in that or subsequent years, and

(3) confirms the historic practice for operation of reservoirs identified on pages 145 and 146 of the Alpine Decree to store, release, and use quantities of water determined by the capacity of the reservoirs and the yield of the tributary basins.

SEC. 102. THE LAKE TAHOE BASIN.

(a) ANNUAL GROSS DIVERSION TOTALS.--The total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in the basin shall not exceed thirty-four thousand acre-feet annually, of which--

(1) twenty-three thousand acre-feet annually are allocated to the State of California for use within the Lake Tahoe Basin; and

(2) eleven thousand acre-feet annually are allocated to the State of Nevada for use within the Lake Tahoe Basin.

After use of the water allocated in this subsection such water may be exported from the Lake Tahoe Basin or reused.

EXHIBIT B

(b) DETERMINATION OF GROSS DIVERSION.--The total annual gross diversions for use under subsection (a) shall be determined subject to the following conditions:

(1) Water diverted and used to make snow shall not be charged to the gross diversion allocation of either California or Nevada unless and to the extent that the snow is produced for use outside the basin.

(2) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's or Nevada's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per annum.

(3) Where water is diverted by a distribution system, as defined by (iii) below, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) Where a water distribuion system supplies any municipal, commercial, and/or industrial points of delivery to use which are not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source.

(ii) Where all municipal, commercial, and/or

EXHIBIT B

industrial points of delivery to use (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured as the sum of all amounts of water supplied to each such point of delivery to use.

(iii) As used in this subsection, the term "water distribution system" means a point or points of diversion from a water supply source or sources together with associated piping which serve a number of identifiable points of delivery to use, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system;

(4) Water inflow and/or infiltration to sewer lines is not a diversion of water, and such water shall not be charged to the gross diversion allocation of either state.

(5) Regulation of stream flow for the purpose of preserving or enhancing instream beneficial uses shall

EXHIBIT B

not be charged to the gross diversion allocation of either state.

(c) TRANSBASIN DIVERSIONS.--(1) The transbasin diversions from the Lake Tahoe Basin in Nevada and California identified in paragraph (2) below, may be continued, to the extent that such diversions are recognized as vested or permitted rights under the laws of the State where each diversion is made. Unless otherwise provided in this section, such diversions are in addition to the other allocations made by this section.

(2) The transbasin diversions referred to in paragraph (1) above are--

(A) the diversion of a maximum of three thousand acre-feet per annum from Marlette Lake for use in Nevada;

(B) the diversion of a maximum of five hundred and sixty-one acre-feet per annum from Lake Tahoe for use in Nevada, except that such diversion shall count against the allocation to Nevada made by this section;

(C) the diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) the diversion of water from North Creek as set forth in the State of Nevada Certificate of Appro-

EXHIBIT B

priation of Water No. 4217.

(3) The transbasin diversions identified in paragraph (2) may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or permitted. Water made available for use within the Lake Tahoe Basin as a result of any such transfer shall not count against the allocations made by this section, and such water may be depleted.

SEC.103. THE TRUCKEE RIVER.

(a) CALIFORNIA TRUCKEE BASIN ALLOCATION - (1) There is allocated to California the right to divert and/or extract, and to utilize any combination thereof, within the Truckee River Basin in California 16,000 acre-feet of water per calendar year by depletion, without regard to whether the source of supply for such diversion or extraction is surface water or ground water.

(2) Within one year following the issuance by the State of California of an annual report of water use for the Truckee River basin, pursuant to Section 104, which shows that the gross diversion or extraction within the Truckee River Basin in California equals or exceeds 16,000 acre-feet, representatives of the States of California and Nevada, the Pyramid Tribe, *the Fallon Tribe,* and the Secretary shall negotiate an

EXHIBIT B

agreement which establishes the relationship between the amount of water diverted or extracted and the amount of water depleted. The entitlement of the State of California to divert and/or extract 16,000 acre feet by depletion shall thereafter be governed by that agreement.

(3) Diversions of water from surface supplies pursuant to this subsection shall be subject to the following Nevada uses:

(A) All such surface diversions shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in the Orr Ditch Decree.

(B) Diversion for use within California initiated after the effective date of this Act shall also be subject to the right of the Sierra Pacific Power Company, or its successor, to divert 40 cubic feet per second of water for municipal and domestic use in the Truckee Meadows in Nevada, as said right is more particularly described in Article V of the Truckee River Agreement.

(4) The water allocated to California pursuant to this subsection may be diverted directly to beneficial use or diverted to storage in reservoirs.

(b) SIERRA VALLEY, CALIFORNIA. -- The allocation of water to California presented by the decree of the United States District Court for the Northern District of California in United States of America v. Sierra Valley Water Company, Civil No. 5597

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is confirmed.

(c) NEVADA ALLOCATION. -- There is allocated to the State of Nevada all water in excess of the allocations made in subsections (a) and (b) of this subsection.

(d) EFFECT OF STATE ALLOCATIONS. -- The allocation*s* of water to California *and Nevada* under ~~this~~ section*s 102 and 103* shall not*, in whole or in part,* form the basis ~~of~~ *for* additional claims ~~against~~ *of water from any* water right holder~~s by the Tribe under the Endangered Species Act~~ *to benefit Pyramid Lake, the Pyramid Lake Fishery, or lands within the Pyramid Lake Reservation, and in determining any such claim, it shall be presumed that the water available to the Pyramid Lake Fishery is that which would have been available had sections 102 and 103 not set forth such allocations*.

SEC. 104. COMPLIANCE WITH INTERSTATE ALLOCATIONS.

Each state shall be responsible for assuring compliance with the allocations made by this title to such state. Within the third quarter following the end of each calendar year, each state shall publish a report of water use for its portion of each basin to which water is allocated by this title.

SEC. 105. FORFEITURE OR ABANDONMENT NOT TO AFFECT ALLOCATIONS.

The forfeiture for nonuse or abandonment of water rights under the applicable law of each state shall not affect the allocations to each state made by this title.

SEC. 106. VOLUNTARY INTERSTATE TRANSFERS.

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(a) Nothing contained herein shall prevent the voluntary interstate transfer of water or water rights by the holder thereof, within the basins subject to the provisions of this Act; provided, that each such transfer shall comply with all state laws applicable to transfer of water or water rights, including but not limited to state laws regulating change in point of diversion, place of use, and purpose of use of water. Diversion and use of water so transferred shall be charged to the allocation of the state from which such water or water rights are transferred.

(b) Each state may establish reasonable criteria and procedures to regulate the voluntary interstate transfer from an area within such state of water or water rights within the basins governed by this Act. Such criteria may include, but need not be limited to, requirements for findings by an appropriate officer or agency that a transfer would not unreasonably affect the environment or overall economy of the area from which the use of water or a water right is being transferred, and that such a transfer is otherwise in the public interest.

SEC. 107. USE OF WATER BY THE UNITED STATES.

The use of water by the United States of America or any of its agencies, instrumentalities or Indian Tribes shall be charged to the allocation of the state wherein the use is made, except as otherwise provided in section 106 of this Act.

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SEC. 108. COURT DECREES.

Nothing in this Title shall be construed as modifying or terminating any court decree, or the jurisdiction of any court, or as affecting the applicability of state law and procedures to the water allocated hereunder.

SEC. 109. PLACE OF USE TO DETERMINE ALLOCATION.

Water diverted or extracted in one state for use in the other shall be charged to the allocation under this Title of the state in which the water is used, except as otherwise provided in section 106 of this Act.

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TITLE II—TRUCKEE RIVER WATER SUPPLY MANAGEMENT

SEC. 201. IMPLEMENTATION OF WATER SUPPLY AGREEMENT.

~~(a)~~ The Secretary shall enter into such contracts and take such actions as are required to carry out the terms and provisions of the Preliminary Settlement Agreement and the Operating Agreement, including, without limitation, contracts for the use of space in Truckee River Reservoirs for purposes of storing and exchanging water, Provided, That--

~~(1)~~*(a)* California, Nevada, the *Pyramid* Tribe, *the Fallon Tribe,* Sierra Pacific Power Company, ~~and~~ the *Secretary, the Secretary of the Army, and the Truckee-Carson Irrigation District* ~~United States~~ have formally approved the Operating Agreement;

~~(2)~~*(b)* the Orr Ditch Court and Truckee River General Electric Court have approved any proposed modifications in river operations, including storage and exchange of water, that would modify any provision in the Orr Ditch Decree or the Truckee River General

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Electric Decree, *provided further, that neither court shall approve any such modification if it would impair, diminish, or otherwise reduce the value of any water rights on the Truckee River or its tributaries,* except for those rights that are ~~voluntarily~~ *expressly* relinquished by the parties to the Operating Agreement;

(c) all applicable requirements of state law and procedures regarding the transfer and use of water rights, including all required state approvals, are met;

~~(3)~~*(d)* all applicable dam safety and flood control requirements are met; and

~~(4)~~*(e)* all storage and releases required to satisfy the rights set forth in the Orr Ditch Decree and the Truckee River General Electric decree are met.

SEC. 202. MODIFICATION OF TRUCKEE RIVER DIVERSION FACILITIES.

Such funds as may be required to permit the Secretary, in consultation with the State of Nevada and ~~with the approval of~~ affected water rights owners, to modify existing Truckee River diversion facilities and operations~~,~~ *including but not limited to Derby Diversion Dam and the Truckee Canal,* to the extent necessary to ensure that implementation of the *Preliminary Settlement Agreement and* Operating Agreement does not impair*,* ~~or~~ diminish, *or otherwise reduce the value of* any water

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rights on the Truckee River or its tributaries, are hereby authorized.

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SEC. 203. PROTECTION OF TRUCKEE RIVER RIGHTS. *

Nothing in this title, the Preliminary Settlement Agreement, the Operating Agreement, or in any other agreement made pursuant to this title, may impair, diminish, or otherwise reduce the value of any water rights on the Truckee River or its tributaries (except for those rights that are expressly relinquished), including, but not limited to, the rights of landowners within the Newlands Project or the Fallon Indian Reservation to delivery of the water of the Truckee River to Derby Dam for diversion pursuant to court decree or any applicable regulations. On application of an affected water rights holder, the Orr Ditch Court and the Federal Water Master, pursuant to the administrative provisions of the Orr Ditch Decree, and the Truckee River General Electric Court, shall have continuing jurisdiction to ensure that all such water rights are not impaired, diminished, or otherwise reduced in value by this Act or any agreements made pursuant to this Act.

TITLE III -- WETLANDS PROTECTION

SEC. 301. AUTHORIZATION TO PURCHASE WATER RIGHTS.

(a) IN GENERAL.--The Secretary is authorized to purchase water rights*, with or without the lands to which they are appurtenant,* ~~and water righted lands within the State of Nevada and to transfer, hold, resell, or otherwise dispose of such water rights and related interests~~ to benefit Federal and State wildlife areas in the Lahontan Valley and the Fern-

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* [Note: sec. 602(f) of the original bill has been revised somewhat and included here as sec. 203.]

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ley Sink in Nevada *or wetlands on the Fallon Indian Reservation* in accordance with the provisions of this section. *Water rights purchased under this section shall, to the maximum extent practicable, be used annually for direct application to such wildlife areas and wetlands. To the fullest extent possible, lands purchased under this section shall be held, managed, transferred, or otherwise disposed of under applicable federal law to benefit such wildlife areas and wetlands.*

(b) CONDITIONS.--The purchase of water rights and ~~related interests~~ *lands* pursuant to this ~~Act~~ *section* shall be subject to the following conditions:

(1) *All* ~~W~~*w*ater rights purchased ~~within the Newlands Irrigation Project~~ must satisfy ~~the~~ eligibility criteria adopted by the Fish and Wildlife Service ~~in connection with acquisition of water rights for the Stillwater National Wildlife Management Area pursuant to Public Law 100-446~~.

(2) *All* ~~W~~*w*ater rights *and lands* shall be purchased from willing sellers, ~~but~~ *provided that* the Secretary may *not* ~~target~~ *make* purchases ~~in areas~~ *within* the Fallon Indian Reservation ~~deemed by the Secretary to be most beneficial to such a purchase program~~.

If a state agency with authority under state law to do so, designates

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areas within which such purchases may be made, the Secretary shall confine the purchases to such areas.

(3) *All water rights purchases shall be contingent upon the transfer of such water rights to the wildlife areas or wetlands described in subsection (a) and* ~~A~~*a*ll water rights purchased shall be transferred *and exercised* in accordance with *applicable* state law and *procedures*.

(4) *All* ~~W~~*w*ater rights purchased shall be managed by the Secretary through the United States Fish and Wildlife Service in cooperation with the ~~State~~ *Nevada Department of Wildlife, provided that water rights purchased to benefit Fallon Indian Reservation wetlands shall be held in trust by the United States for the benefit of the Fallon Tribe and shall be subject to the supervision of the Secretary through the Bureau of Indian Affairs*.

(5) Within one year after this Act becomes effective in accordance with sections 601(a) and (b), and prior to implementation of the water rights purchase program under this section and any alternative program for Fallon Naval Air Station lands under section 401, the Secretary shall perform a special study and report on potential adverse impacts of these programs on agricultural, municipal, industrial, and domestic water supplies and social and economic interests and activities in Churchill and Lyon Counties and on the Fallon Indian Reservation. In fashioning and implementing these programs, the Secretary shall adopt measures designed to mitigate such impacts, and shall conduct a continuing monitoring and protection program to monitor, report on, and, as necessary, further mitigate such impacts. Nothing in this subsection

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shall impair or diminish the jurisdiction and authority of the Nevada State Engineer.

(c) TRANSPORT.--The Secretary is authorized to--

(1) use existing water transport systems where available *to transport water provided to wildlife areas or wetlands under this section or section 401*; and

(2) reimburse non-Federal entities, including but not limited to the Truckee-Carson Irrigation District,

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(d) CONSTRUCTION OF THE SECTION.--The Federal water purchase program authorized in this section is specific to this section and shall not be construed as a precedent in determining Federal responsibilities toward wildlife areas *or wetlands*.

(e) AUTHORIZATION.--There are hereby authorized to be appropriated *such funds as are necessary* to carry out the provisions of this section*, including* . $4,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994 *earmarked solely for the acquisition of water rights, with or without the lands to which they are appurtenant, for the wildlife areas and wetlands described in subsection (a)*.

SEC. 302. STUDY OF NATIONAL WILDLIFE REFUGE CREATION.

Within two years of the date of passage of this Act, the Secretary, *in consultation with state and local entities including the Fallon Tribe,* shall provide the Congress with recommendations concerning the transfer of certain United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for establishment of the permanent National Wildlife Refuge and Wildlife Management Area to be managed for fish and wildlife purposes in cooperation with the signatories ~~of~~ *to* the 1948 Tripartite Agreement.

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TITLE IV--CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM

SEC. 401. ~~TRANSFER OF~~ FALLON NAVAL AIR STATION~~'S~~ *LANDS AND* WATER RIGHTS.

(a) ALTERNATIVE AGRICULTURAL OUTLEASE PROGRAM.--Not later than one year after the effective date of this ~~Act~~ *section as defined in section 603*, the Secretary of the Navy, in consultation with and with the assistance of the Secretary, shall develop and implement an alternative program for the lands owned by the United States within the Naval Air Station at Fallon, Nevada *and within the Newlands Project,* to replace the *current* agricultural outlease program. The alternative program shall satisfy the Navy's dust abatement ~~and~~*,* fire safety*, and foreign object damage safety* requirements*.*~~, in the most water efficient manner. The water rights appurtenant to those lands which are not needed for dust abatement and fire safety requirements shall be transferred to the Pyramid Lake Indian Reservation for fishery purposes.~~ *In addition, the alternative program shall either:*

(1) include reasonable measures designed to reduce water use to the greatest extent feasible and provide for: (A) the transfer of that quantum of Fallon Naval Air Station water rights which is not needed as a result of such measures to the wildlife areas and wetlands described in section 301(a); and/or (B) the retirement of such quantum of water

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rights; and/or

(2) make available portions of such Fallon Naval Air Station lands and appurtenant water rights to the Fallon Tribe as part of a negotiated agreement with that Tribe under section 60:(c).

Any transfer of water rights authorized under this subsection shall be made in accordance with state law and procedures.

(b) AUTHORIZATION OF APPROPRIATIONS.--There are hereby authorized to be appropriated such funds as are necessary to develop and implement the alternative program for the Naval Air Station at Fallon, Nevada described in subsection (a).

(c) REIMBURSEMENT OF COSTS.--The Secretary shall reimburse the Truckee-Carson Irrigation District for the full

operation and maintenance charges associated with ~~the~~ any water rights transferred pursuant to this section.

SEC. 402. RECOVERY PLANS.

(a) IN GENERAL.--Pursuant to section 4(f) of the Endangered Species Act (16 U.S.C. 1533(f)), the Secretary through the United States Fish and Wildlife Service shall revise, ~~and~~ update, and implement plans for the recovery of the ~~cui-ui and Lahontan cutthroat trout~~ *Pyramid Lake Fishery*. Such plans shall be completed not later than one year after the date of enactment of this Act. ~~If implementation has not begun within six months following the completion of the recovery plan and Congress has not acted to the contrary, the Secretary shall proceed to implement such plans.~~

The reports required by section 4(f)(3) of the Endangered Species Act (16 U.S.C. 1533(f)(3)) shall describe specifically the extent to which recovery of the Pyramid Lake Fishery has been achieved, continuing needs for plans adopted under this section, any need for adjustments in such plans, and the accrued and projected costs for development and implementation of such plans.

(b) CRITERIA FOR DEVELOPING PLANS.--In developing ~~the~~ recovery plans pursuant to subsection (a), the Secretary shall*, in a manner consistent with the provisions of the Endangered Species Act as now in force or hereafter amended*--

(1) take account of and include ~~the~~ *any* transfer *to the*

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Pyramid Lake Indian Reservation of the water rights of the *Fallon* Naval Air Station ~~at Fallon, Nevada described in~~ *under* section 401(a);

(2) take account of, ~~including~~ *include*, and make the plans subject to and consistent with the provisions of the interstate allocations described in title I, any additional agreements authorized under title I, ~~and~~ the Preliminary Settlement and Operating Agreements authorized under title II ~~of this Act~~*, and the storage agreement authorized under section 602(e), provided that the interstate allocations described in and any additional agreements authorized under title I shall not, in whole or in part, form the basis for any recovery plan provision which seeks additional water from any water rights holder*;

(3) take account of other programs for the enhancement of the Pyramid Lake Fishery, including those programs managed by the Pyramid Tribe or its subordinate organizations and, to the extent of his authority, ensure that such programs are consistent with recovery;

~~(3)~~*(4)* consider water quality needs in the lower Truckee River and Pyramid Lake;

~~(4)~~*(5)* consider possible habitat improvements in the lower Truckee River;

~~(5)~~*(6)* consider possible access improvements to the mouth of the Truckee River;

~~(6)~~*(7)* establish a schedule which is designed to achieve implementation of a recovery plan*s* for the ~~cui-ui in the Truckee River/Pyramid Lake ecosystem~~ *Pyramid Lake Fishery;*

~~(7) establish a schedule which is designed to achieve implementation of a recovery plan for the Lahontan Cutthroat trout;~~

(8) consider measures *not detrimental to the recovery of the cui-ui, to aid recovery of the Lahontan cutthroat trout by increasing* ~~to increase~~ the number and size of juvenile Lahontan cutthroat trout recruited to Pyramid Lake through natural reproduction where possible, or through construction or expansion of hatcheries and related facilities; and

(9) consider other actions consistent with the allocations described in sections 101, 102, and 103 ~~of this Act~~ and the Operating Agreement ~~described in section 201 of this Act~~ that might enhance recovery of the ~~endangered and threatened species~~*Pyramid Lake Fishery; and*

(10) consider the implications on recovery of cross-

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propogation between the cui-ui and the Tahoe sucker.

(c) PROTECTION OF VESTED RIGHTS. -- The Secretary shall adopt no recovery plan provision which would impair, diminish, or otherwise reduce the value of any water rights.

(d) AUTHORIZATION OF APPROPRIATIONS. -- There are hereby authorized to be appropriated $....... to be applied first to development and implementation of the recovery plans required by this section, with the remaining balance to be credited to the Pyramid Lake Paiute Tribal Development Fund established under section 501(a).

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TITLE V--PYRAMID LAKE DEVELOPMENT FUND

SEC. 501. PYRAMID LAKE FUND.

(a) There is hereby established with the Treasury of the United States the "Pyramid Lake Paiute Tribal Development Fund".

(b) There is authorized to be appropriated to the Pyramid Lake Paiute Tribal Development Fund ~~$75,000,000~~ *$...... less sums applied to development and implementation of recovery plans under section 402(d),* together with interest accruing from the effective date of this ~~Act~~ *title as defined in section 603* at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on the outstanding Federal obligations of comparable maturity. ~~Following execution of the settlement agreements, judgments, and other appropriate final dispositions specified in section 603,~~ *After the effective date of this title,* the Secretary of the Treasury shall*: (1)* allocate and make available such moneys from the trust fund as are requested by the Tribe~~,~~*; (2) invest* ~~A~~*a*ny moneys not *so* allocated to the Tribe and remaining in the *trust* fund ~~authorized by this section shall be invested by the Secretary of the Treasury~~ in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 162a)~~.~~*; and (3)* ~~The Secretary of the Treasury shall~~ allocate

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and make available such interest from the trust fund as is requested by the *Pyramid* Tribe.

(c) All of the ~~F~~funds appropriated pursuant to this section shall be invested or used for economic development~~.~~ *for the Pyramid Tribe, provided that no such funds may be used to acquire water rights or lands within the Newlands Project or the Fallon Indian Reservation.*

(d) *Subject to subsection (c) and* ~~N~~*n*otwithstanding any *other* provision of law, the *Pyramid* Tribe shall have complete discretion to invest and manage the funds appropriated pursuant to this section provided that the United States shall not bear any obligation or liability regarding the investment, management or use of such funds that the *Pyramid* Tribe elects to invest, manage or use.

TITLE VI--MISCELLANEOUS PROVISIONS

SEC. 601. CLAIMS SETTLEMENT.

(a) This Act ~~is contingent upon settlement of the following outstanding litigation as indicated~~ *shall not take effect until the following actions and claims are dismissed with prejudice and the following motions are withdrawn with prejudice*--

(1) Pyramid Lake Paiute Tribe v. California, civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California~~, to be dismissed with prejudice~~;

(2) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the *Pyramid* Tribe's proposed amended complaint~~, water issues to be dismissed~~;

(3) Pyramid Lake Paiute Tribe v. Lujan, Civil S-87-1281-LKK, United States District Court, Eastern District of California~~, to be dismissed~~;

(4) all claims presented in Pyramid Lake Paiute

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Indian Tribe v. Department of the Navy, Civil No. R-86-155 BRT in the United States District Court

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for the District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit~~, to be dismissed~~; and

(5) the withdrawal of all pending motions filed by the *Pyramid* Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

~~(b) The Signatories under section 201 shall negotiate an agreement to insure that the matters settled by this Act and its associated agreements will not be subject to litigation subsequent to the effective date of this Act.~~

(b) This Act shall not take effect until the Secretary, California, Nevada, the Pyramid Tribe, Sierra Pacific Power Company, the Fallon Tribe, and the Truckee-Carson Irrigation District have entered into an agreement which--

(1) certifies that all matters required to be settled by this Act and its associated agreements have been settled and that all preconditions to such settlement have been satisfied;

(2) ensures that such matters will not be subject to litigation subsequent to the effective date of this Act; and

(3) sets forth waivers of sovereign immunity by the Pyramid Tribe and the Fallon Tribe with respect to actions brought to enforce their obligations under the agreement required by this section, this Act, and all associated agreements.

(c) ~~On request by and in accordance with a resolution of~~ ~~t~~*T*he Business Council of the Fallon ~~Paiute-Shoshone~~ Tribe~~,~~ *and* the Secretary shall negotiate diligently ~~with the Business~~

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~~Council~~: (1) to establish a program for full and prompt implementation of the provisions of Public Law 95-337 and/or alternatives thereto that are acceptable to the Fallon Tribe; and (2) to settle any outstanding claims arising from breaches of the 1906 Agreement between the Fallon Tribe and the United States, Public Law 95-337, and the Federal trust responsibility to the Fallon Tribe. ~~Such negotiations shall commence within sixty days of the date of the Business Council resolution and shall conclude within twelve months thereafter, unless the Business Council by resolution requests an extension of the negotiations.~~ To enable the Fallon Tribe to fully protect its interests in such negotiations, the Secre-

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tary shall provide adequate funding for technical and legal assistance under his existing authorities programs. Neither the provisions of this Act nor the occurrence of negotiations under this section shall: release or modify any obligations or liabilities of the United States under the 1906 Agreement, Public Law 95-337, or the Federal trust responsibility; or *prejudice, modify, or otherwise affect any claim to water rights appurtenant to lands within the Fallon Indian Reservation or the priority, nature, or extent of any such rights.* ~~modify, extinguish, or otherwise affect any water rights appurtenant to lands within the Fallon Indian Reservation.~~

SEC. 602. GENERAL PROVISIONS.

(a) All of the trust land within the Pyramid Lake Indian Reservation shall be permanently held by the United States in Trust for the sole use and benefit of the *Pyramid* Tribe~~.~~*, subject to any existing rights of use on or ownership in such lands held by or for the benefit of others*.

(b) The *Pyramid* Tribe shall have ~~sole and exclusive~~ *the* right to regulate all hunting and fishing on all lands, including the bed and banks of the Truckee River and Pyramid Lake, within the boundaries of the Pyramid Lake Indian Reservation*, provided that the exercise of such authority shall be subject to the provisions of the Endangered Species Act and other applicable federal law and shall not impair, diminish or otherwise reduce the value of water rights held by*

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others.

(c) Nothing in this Act shall limit or diminish the Federal Government's trust responsibility to ~~any Indian~~ *the Pyramid Tribe or the Fallon* Tribe.

(d) The United States confirms and ratifies certain waivers by the Tribe of the right to object to the implementation of the water supply measures described in sections 3 and 21 of the Preliminary Settlement Agreement *and any waivers of sovereign immunity given by the Pyramid Tribe and the Fallon Tribe pursuant to section 601(b)(3).*

(e) The Secretary, the *Pyramid* Tribe, and the State of Nevada shall negotiate an agreement determining ~~permanent~~ rights

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to store water for the benefit of the Tribe and the Pyramid Lake Fishery in Stampede and Prosser Reservoirs*, for so long as and to the extent that the Fishery is endangered or threatened***.**

(f) No acquisition of water rights or water storage rights by or for the benefit of the Pyramid Tribe pursuant to sections 201 or 602(e), or any agreement made pursuant thereto or otherwise facilitated by title I or title II shall in whole or in part form the basis for any claim that: (1) the amount or timing of diversions from the Truckee River at Derby Dam to serve other water rights should be reduced or altered; or (2) water rights appurtenant to lands within the Fallon Indian Reservation or the Newlands Project should not be transferred.

~~(f) Nothing in title II of this Act, or in agreements made pursuant to it, may affect any recognized and perfected right of any other party or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands project for delivery of the water of the Truckee River to Derby Dam and for diversion of such water at Derby Dam pursuant to the Orr Ditch Decree or any applicable regulations approved by a court of competent jurisdiction:~~ Provided further, ~~That the Orr Ditch Court and the Water Master, pursuant to the administrative provisions of the Orr Ditch Decree, including the Truckee River Agreement, incorporated and made part thereof, may ensure that all water rights of the Truckee River are not impaired or diminished by this Act or any agreements made pursuant to this Act, except with respect to~~

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~~the interstate allocation of water to California or the Tahoe Basin: *Provided further*, That nothing in title II of this Act or any agreements made pursuant it will abrogate the jurisdiction or required approvals of the State engineer.~~

SEC. 603. EFFECTIVE DATE.

In addition to other conditions on the effectiveness of this Act set forth in this Act. ~~T~~*t*he provisions of titles II *and* V, and ~~VI~~ section*s* 401 *and 602* ~~of title IV of this Act~~ shall not take effect until the ~~agreements required under title II are in effect,.~~ *Preliminary Settlement Agreement, the Operating Agreement, and the agreement required by section 601(c) have been approved by all necessary parties, any court approval required under section 201(b) has been given, and* the funds authorized under ~~title V~~ *sections 202, 402(d), 501(b), and 601(c)* have been appropriated~~,~~. ~~the outstanding claims described in section 601(a) have been dismissed, the Orr Ditch Court and the Truckee River General Electric Court have approved any provisions in the Preliminary Settlement Agreement and the Operating Agreement described in section 201 which affect the Orr Ditch Decree, and the Secretary, the State of Nevada, the Tribe, the Sierra Pacific Power Company, and the Cities of Reno and Sparks enter into an agreement certifying that all necessary preconditions for the settlement have been satisfied and provide for the implementation of the settlement.~~

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DISCUSSION IN SUPPORT OF FALLON TRIBE'S PROPOSED AMENDMENTS TO S.1554

February 6, 1990

The following is submitted in conjunction with the amendments to S.1554 proposed by the Fallon Tribe in the attached Exhibit B:

A. S.1554 as Introduced Will Impair and Foster New and Intensified Attacks on the Fallon Tribe's Water Rights.

Until very recently, the Fallon Tribe was unrepresented in the myriad regional water rights litigation, administrative proceedings and legislative initiatives. The Tribe had no resources with which to retain attorneys or experts to participate in such matters and its trustee, the Secretary, did nothing to protect the rights of the Tribe. It was not until mid-1988 that any funding for legal assistance was provided to the Tribe.

One of the most damaging omissions occurred in litigation commenced by the United States to adjudicate water rights on the Carson River. Throughout the long history of the Alpine case, the United States failed to advocate -- or even articulate -- the reserved water rights of the Fallon Tribe in the Carson River. Nor was the Tribe represented in that litigation by TCID, since neither the Tribe nor its members are members of TCID. Thus, the Tribe's reserved water rights in the Carson remain to be adjudicated. For the present, the Tribe is treated in common with all other Lahontan Valley farmers, wholly dependent on the Newlands Project for its water.

This gives the Tribe a vital interest in the amount of water available to, and the operating criteria and procedures (OCAP) for, the Newlands Project. To begin to protect this interest, in mid-1988 (when it had finally received some federal funding) the Tribe intervened in the OCAP case, one of the many cases threatening the Project. Yet even there the Department contends the Tribe should not be permitted to raise the bulk of its concerns about proposed long-term OCAP, and the Pyramid Tribe contends that the Fallon Tribe is foreclosed from asserting that the Secretary's trust responsibility flows to the Fallon Tribe as well as the Pyramid Tribe.

The Fallon Tribe is now concerned that S.1554 will further impair and foster new attacks on its water rights. We describe below some of the features of the Bill which give rise to these concerns.

1. **Carson River Allocations.** The Carson River allocations prejudice the Fallon Tribe's reserved water rights claim, which remains unadjudicated. The Bill: (a) confirms the interstate allocations in the Alpine decree; (b) expressly limits further allocations to uses initiated prior to the effective date of the Act; and (c) places a cap on such further allocations. This leaves

no room for the Fallon Tribe's reserved rights claim.[1] For years, the Department opposed ratification of the California-Nevada Compact, because it failed to accommodate the Pyramid Tribe's unadjudicated claim to additional Truckee River reserved rights. Yet it now appears willing to acquiesce in a similar measure that would foreclose the claims of the Fallon Tribe.

2. **Allocations to California.** To settle disputes between the Pyramid Tribe and California, the Bill allocates to California 23,000 acre feet per year from the Tahoe Basin, and additional water from the Truckee River. Each of these allocations will diminish the amount of water that will reach Pyramid Lake. If that water is essential for the cui ui's survival and recovery,[2] inevitably the Pyramid Tribe will turn to the Newlands Project and the Fallon Tribe to recoup it. The allocations will also reduce Truckee River water available for Project diversions, imposing direct losses on Project farmers, including the Fallon Tribe.

The "savings" provision in § 103 (regarding Truckee River allocations) does not ameliorate these concerns, since (among the reasons):

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[1] While § 101(f) provides that the Carson River allocations do not modify or terminate any court decree, §§ 101(a) & (b) would prevent modification of the Alpine decree to accommodate any reserved water rights held by the Fallon Tribe.

[2] The Fallon Tribe is informed that, absent mitigating measures, these allocations to California would cut the cui ui index in half.

-- there is no comparable provision for the Tahoe Basin allocation;

-- it covers claims under the Endangered Species Act only; yet the Pyramid Tribe's claims against the Project and the Fallon Tribe are founded as well on the federal trust responsibility (which is explicitly preserved in § 602(c)) and the beneficial use doctrine, and may be founded on other bases in the future;

-- it does not foreclose claims by parties other than the Pyramid Tribe, such as environmental groups, individuals, the Secretary, or other federal officials; and

-- it rests on the questionable premise that the Fallon Tribe and other Newlands Project farmers will somehow be able to resist claims for more restrictive OCAP by asserting that water consumed in California should be presumed to be physically available in the Lower Truckee River and Pyramid Lake.[3]

Notably, the additional "savings" clause in § 602(f), purporting to protect existing water rights, explicitly withholds such protection with respect to the interstate allocations to California.

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[3] In contrast, in preparing a recovery plan for the cui ui, the Secretary must "take account of, include, and make the plans subject to and consistent with" the allocations to California (§ 402(b)(2)). This appears to vitiate the § 103 "savings" clause.

3. **Allocation to Pyramid Tribe.** The Bill contemplates an allocation of Truckee River water to the Pyramid Tribe. This will give the tribe new legal ammunition in its present and further battles with Lahontan Valley water users. To date, in the OCAP litigation the Pyramid Tribe has not been in a position to assert that its adjudicated water rights are unfulfilled under any proposed OCAP. A new allocation will surely lead to demands for more restrictive OCAP to serve such newly vested water rights.

4. **Reservoir Operations.** A key element of the settlement between the Pyramid Tribe and up-river water users is a total overhaul of the manner in which Truckee River storage reservoirs have been operated for decades. The Bill attempts to protect Newlands Project farmers from these changes by requiring that the changes (at least to some extent) be approved in advance by the Orr Ditch court, and that all storage and releases required to satisfy rights in the Orr Ditch and Truckee River General Electric decrees be met (§ 201(a)(2) & (4)).

The Fallon Tribe has been informed that the planned modifications to reservoir operations will reduce the amount of water available to the Newlands Project. The Bill itself contemplates this. Section 202 authorizes funds to modify existing diversion facilities "to ensure that implementation of the Operating Agreement does not impair or diminish any water rights on the Truckee River." We understand that this provision was intended to provide for expansion of the Truckee Canal (among other facilities) to prevent reductions in water reaching Lahontan Reservoir that would otherwise result from the planned changes in reservoir operations.

Thus, the Bill will almost certainly engender major litigation in the Orr Ditch case, over the question whether changes in reservoir operations will adversely affect Lahontan Valley users or other Truckee River water rights holders. That litigation will require the court to determine, based on hypothetical hydrological scenarios and computer modelling, whether there will be an impact on such water rights in the future. The Bill provides no remedy in the event the Operating Agreement is approved and water rights are, nevertheless, actually impaired in the future. Nor does it provide any remedy if, in order to protect existing water rights, the carrying capacity of the Truckee Canal must be enlarged but the funds authorized in § 202 are not appropriated or the facilities are not modified for other reasons (e.g. opposition from the Pyramid Tribe[4]).

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[4] The Pyramid Tribe has a pending claim that portions of the Truckee Canal trespass on tribal lands. Like its other claims against the Newlands Project, that claim will not be dismissed under S. 1554. Indeed, it is strengthened by § 602(a), which provides that all Reservation trust land must be held "for the sole

5. ESA Provisions. The Bill goes well beyond the requirements of the Endangered Species Act.[5] Section 402(a) requires that a revised and updated recovery plan must be prepared within one year of enactment, and implemented within six months thereafter (if "Congress has not acted to the contrary"). It is no secret that the Pyramid Tribe believes a principal component of any recovery plan must be a further reduction in diversions of Truckee River water to the Newlands Project. Provisions such as these, therefore, will become new ammunition in legal assaults on Lahontan Valley water users. To address this concern, the Bill should at least provide that the recovery plan may not impair vested water rights.

B. Available Federal Funds Should Be Committed to Solving Actual Problems.

The ultimate resolution of regional water controversies will require significant federal expenditures. S. 1554 itself contemplates that federal funds will be expanded for:

-- improvements to the Marble Bluff Dam and fishway and

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use and benefit of the Tribe."

[5] For example, the Bill adopts a series of permanent measures (such as permanent storage and water right allocations) irrespective of future changes which may occur in the status of the fish (changes which the Bill is designed to bring about), or in the Endangered Species Act.

lower Truckee River habitat, and other measures, to benefit the cui ui and Lahontan cutthroat trout;

- modifications to Truckee River diversion facilities, to prevent impairment of water rights as a result of changes in reservoir operations;
- water rights purchases, to benefit Lahontan Valley wetlands;
- reimbursement of non-federal entities for O & M charges in connection with water rights purchased for wetlands; and
- development of an alternative to the agricultural outlease program at the Fallon Naval Air Station.

In addition, federal funds should be used to finance improvements in Newlands Project efficiencies or other measures that would relieve the demands on the region's limited water supplies.

Funding under the Bill should be committed first to these needs, and to remedying the long-standing injustices suffered by the Fallon Tribe. The Bill's commitment of $75 million to the Pyramid Tribe for unspecified purposes, while allocating nothing for irrigation improvements on the Fallon Reservation or other measures to fulfill accrued obligations to the Fallon Tribe, is indefensible.

While the Fallon Tribe has outstanding claims for money damages against the United States, we are aware of no such claims by the Pyramid Tribe. Nor does the Bill require the Pyramid Tribe to relinquish any such claims. Quite apart from the $75 million fund, the Bill confers an extraordinary array of extremely valuable benefits on the Pyramid Tribe. Moreover, for years federal funds have been expended lavishly for physical improvements to the Pyramid Lake Reservation and its fisheries; for administrative, judicial and legal proceedings on behalf of the Pyramid Tribe; and for other tribal benefits. These expenditures have dwarfed those for the Fallon Tribe, notwithstanding the directives of PL 95-337. There is no fair basis for a $75 million cash award to the Pyramid Tribe exclusively, given the accrued entitlements of the Fallon Tribe.

C. The Bill Provides No Protection for Fallon Reservation Wetlands.

In 1987 the Fish & Wildlife Service reported that there are approximately 790 acres of wetlands on the Fallon Reservation which are used by Tribal members for grazing and recreation. FWS noted that "some of the wetlands may become desiccated due to Operating Criteria but would become reestablished with water rights." This analysis was based on OCAP with an allowable diversion of 362,000 acre feet per year; OCAP now in place are more restrictive and, if the Pyramid Tribe prevails in administrative or judicial proceedings, far more restrictive OCAP will be adopted. Thus, Fallon Reservation wetlands, like others in Lahontan Valley, are at risk.

Title III of S.1554 is designed to protect Lahontan Valley wetlands, principally through the purchase of water rights. Yet its provisions make no reference to Fallon Indian Reservation wetlands. Given the federal trust responsibility to the Fallon Tribe, and the Government's position as trustee of the involved lands, the Bill should be at least as protective of Reservation wetlands as it is of off-Reservation wetlands.

D. Conclusion.

To address these concerns, the Fallon Tribe has prepared and urges the adoption of the amendments to S.1554 shown in the attached Exhibit B.

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Senator BRADLEY. Thank you, Mr. Steve. Let me thank you for your testimony and for your presence here. It is a long way to come. How many members in the Fallon Tribe?

Mr. STEVE. We have approximately 1,200 members total. That is not all residing on the reservation.

Senator BRADLEY. How many live on the reservation?

Mr. STEVE. About 800.

Senator BRADLEY. So you have about 800?

Mr. STEVE. Yes.

Senator BRADLEY. There is no question in my mind that you have to deal with a serious problem. As I read it, and you check me if I am wrong, essentially the Federal Government took your land in exchange for a commitment to provide irrigated land.

Mr. STEVE. Yes.

Senator BRADLEY. It has never really been able to deliver on that for a variety of reasons, and since OCAP the amount of water going to Newlands should have been decreased, not increased, thereby putting greater pressure on you.

Mr. STEVE. Yes.

Senator BRADLEY. And then on top of that there is a problem about what is the quality of the water, because if it is drainage water it is not exactly the best water. And that, in a nutshell, is how I see your predicament. Do you want to elaborate on that any more, in a personal sense? You have never received just compensation since 1906?

Mr. STEVE. No part of the original agreement was ever reached by the tribe or the government, for the tribe, in other words.

Senator BRADLEY. Do you see any way that you could receive what is your due absent increases in flows to Newlands?

Mr. STEVE. By an efficient irrigation system, which we started under the 1978 act. And then all the process by the Secretary of Interior stopped, because on the 2,640 acres to the reservation they went in and dug a deep drain. And that is where the toxic is coming from to go into the marshes. If they would have dug a shallow drain that would never have happened, but they dug a deep drain, and one of the reservation cattlemen even stated that the cattle won't even drink the water when that drain was originally. But today it is leeching itself out. The cattle are starting to drink the water, ducks are starting to come into the drain, and there is fish starting to take place in that drain.

Senator BRADLEY. As clearly and as directly as possible, what is it that you want?

Mr. STEVE. We want implementation of 95-337 to rehab the present reservation. That is where we make a living right now, as farmers and cattlemen, et cetera. There is a possibility we might, what we are negotiating on or talking about right now is possibly adding what we call Reservation III. Pyramid Lake's policy is no more land to put into production, because any new lands to go into production, because that takes water away from them. But——

Senator BRADLEY. Which is what we don't want.

Mr. STEVE. Yes. And they are willing to support, if we get involved with what we call Reservation III, and is to buy already water-righted acreage and land that is already into production.

And then another thing we are after is we do have 800 acres of wetlands on the reservation that is dried up, similar to the Stillwater marshes. So we want to retain the water rights on our reservation and transfer them to the wetlands through some kind of agreement and negotiation takes places with the Interior Department.

Senator BRADLEY. Can you describe these wetland areas?

Mr. STEVE. It is marshes. Ducks come into this area, the same way on the Pacific Flyway that comes in through our area. There is the marshes, they land there also. As a kid we used to catfish in that thing, and it was wet is what I am saying. Right now there is, you know, again because of the upstream use of water and the demand, these marshes are also dried up.

Senator BRADLEY. When was the last time anybody talked to you about resolving your problem?

Mr. STEVE. About a week ago. The Secretary of Interior more or less sent out a team from different departments, Reclamation, Fish and Wildlife, Bureau of Indian Affairs, and we're starting to sit down at the table with some language that will help us in developing our goals, such as the wetlands, rehab of the reservation, possible Reservation III, and come to an agreement on the table. And with this thought, if we can come to an agreement, this is where Senator Reid, he is leaving us a space in this bill.

Senator BRADLEY. So who was the lead Interior person at that meeting?

Mr. STEVE. A person by the name of Joe Miller, and he is with the Bureau of Reclamation I believe. And we have had two sessions with him now, and we have got another one lined up coming I think within a months time. But we want to stay on top of this and come to an agreement so we can insert it into this bill.

Senator BRADLEY. Well——

Mr. STEVE. Do you mind if I turn this over to my attorney a little bit?

Senator BRADLEY. No, but you have done a great job. You don't need an attorney. Your attorney might confuse the issue. But please, if your esteemed attorney——

Mr. CHESTNUT. Trusted, I think is the term.

Senator BRADLEY. What is your name for the record?

Mr. CHESTNUT. My name is Steve Chestnut, Senator. The tribe would like to have the framework for settlement included in the bill, and not simply rely on the good graces of Interior, which have not been very effective for the last seven or eight decades, in providing justice to the tribe. And they don't want to see this bill go forward without having something in it which gives them some assured basis for resolving their claims. It may involve further negotiations on that basis, but the tribe feels very, very strongly that the bill should include something which establishes a framework with which they can work to give them justice.

And 90 days may be sufficient to establish a framework. It certainly would not be sufficient to negotiate out more of the details. And, as Mr. Steve has said in his statement, the tribe has just become privy to this process. It is not like the tribe has been sitting back being non-diligent. It is a very small tribe with limited resources, and they are doing the best they can.

The other thing is that the OCAP, the proposed OCAP does accommodate expansion of irrigation based on existing water rights on the reservation. It is premised on achieving certain efficiencies project wide.

Senator BRADLEY. Is the land on the reservation adequate? The quality of the land, irrigatable?

Mr. CHESTNUT. We believe it is sufficient to——

Senator BRADLEY. You haven't had the best experience with that, Mr. Steve.

Mr. STEVE. No. Fifty percent of the reservation is unfit for agriculture, yet it has solid water rights on it. This is why we are contending to possibly negotiate Reservation III.

Senator BRADLEY. So you tell me, the plan is not to use the water rights on the land, on the reservation that is now incapable of being farmed, but to take the water rights and use them elsewhere?

Mr. STEVE. For the wetlands.

Mr. CHESTNUT. With due respect, the tribe hasn't adopted a plan. The tribe wants to view various alternatives, but the tribe has made no decision about what the best alternative is, and would like a provision in the bill which recognizes and provides the basis for considering alternatives. It is a difficult decision.

This is the big issue on this reservation. It has been the big issue for many, many years, and they can't decide it in 60 days. But they need something to work with, and currently the bill doesn't provide anything of that sort to them.

Senator BRADLEY. Well, my hope is that we'll be able to, as I said in my opening statement, my hope is that we will be able to take into consideration your views and attempt to resolve the problem. There are real competing interests, though, in terms of getting a bill, and we have to move ahead. And so I would hope that although you entered the process late, you would still become rather active in attempting to get the framework, in attempting to at least have an agreement at the tribe level as to what it is specifically that you want. And then take into consideration all the other elements of the bill, the likelihood you can get what you want, in the context of what everybody else has signed off on.

Mr. CHESTNUT. I just want to underline one more thing, which is this issue, the T-J Drain issue which has been discussed quite a bit. The jury is still out on that issue, Senator, and the drain that we are talking about is a drain which was dug by Bureau of Indian Affairs relatively recently, much more deeply than other drains on the reservation. And there are potential remedies that may solve the situation, and it may be a transitory situation.

It is a little bit unfair for the tribe to be confronted with a statement this late in the game that there is this environmental problem which obviously is unsolvable, and you have got to sacrifice half your water rights. I just want to state for the record that the issue on that is not as clear as has been stated.

Senator BRADLEY. Fine. I appreciate your laying it on the record. Well, let me say that I urge you to push ahead during the upcoming 90 day period. It is longer than you might expect, given the importance of moving this bill. My hope is that your concerns will be resolved in the context of any bill that passes here. At the same time, one does not want to hold in abeyance the whole bill to your particular interest, although my hope is that it can be resolved. In the absence of agreement, I might decide to do what seems to me to be in the public interest, and that might make a lot of people angry, not only you.

Mr. CHESTNUT. If the tribe can't make the schedule and the bill gets enacted leaving them out and including some provisions by the way which affirmatively threaten the little that they have, and we have proposed some language which would accommodate that, what do they do then? Do they wait another——

Senator BRADLEY. I take your point. I take your point. My hope is that we get this resolved, and the staff of the subcommittee is open and available to all parties, in particular to you and your negotiations with Mr. Miller and the other interested parties.

Mr. CHESTNUT. I think we are going to try to work with Senator Inouye, because the 90 day period is really enough for a framework, not for an administrative solution.

Senator BRADLEY. Senator Reid quoted Lao Tzu earlier today, noting that the journey begins with one step. Let's get the framework.

Mr. CHESTNUT. That is what we will try to do.

Senator BRADLEY. And then move from there. Thank you very much.

Mr. STEVE. Thank you, Senator.

Senator BRADLEY. Our last panel for today consists of the Hon. Virgil Getto, Nevada State Senate; Cyril Schank, Chairman, Board of Churchill County Commissioners; Hon. Joe Dini, Speaker, Nevada State Assembly; and Ted deBraga, President, Truckee-Carson Irrigation District, Fallon, Nevada.

Let me welcome you to the subcommittee. You have had, I don't know whether it is the opportunity, the advantage, or the pain of sitting through the entire hearing, but of course everyone is waiting for your testimony. And I hope that we will move ahead as we have for the rest of the testimony, each of you take five minutes and then we will ask questions.

So why don't we begin with Mr. Getto.

STATEMENT OF HON. VIRGIL GETTO, NEVADA STATE SENATOR

Senator GETTO. Thank you, Chairman Bradley. I am Virgil Getto, State Senator representing the Central Nevada senatorial district, and I am also the Chairman of the Senate Natural Resources Committee. Being a legislator for 22 years and a farmer all of my adult life, I am very aware of the needs to resolve the disputes that have plagued my constituents and those who are impacted by the upper Truckee and Carson Rivers.

In concept, I do support the endeavors of S. 1554 and realize the tremendous importance of this bill to all those whose lives are effected by the two river systems. It is a mechanism to resolve 80 years of litigation that has been an extreme drain on the farmers and the taxpayers of the area. I want to give some background information on the area I represent, the Newlands project, which is impacted the most by S. 1554.

I am a typical farmer in the Newlands project, farming about 350 acres which has supported a dairy for three generations of Getto's. My father, an immigrant, was encouraged by the Bureau of Reclamation to come to the Newlands project and buy raw land around 1914 and develop it. Posters and ads by the Bureau during those early 1900s brought many eager men and women who were willing to work hard pursuing the American dream, and carving from this raw land an oasis in the desert, a nice agribusiness oriented community with a quality of life that is great.

I want to emphasize here that this Bureau of Reclamation project is not one of those with a lot of 4,000 or 5,000 acre farms that are alleged to being subsidized by the taxpayers, such as those that have been in the news lately. There is not a single land owner in the project who is subject to the acreage limitations of the Reclamation Reform Act.

I want to make a note, too, that one third of the water-righted land was farmed before the project was completed, so there were about 21,000 acres of vested water rights, and also about 4,000 water right parcels. There are hundreds of smaller water users who supplement their income with small farming operations.

I would also like to make note that, on the comment that you made this morning about the small acreage, that many of these——

Senator BRADLEY. I was going to ask you that.

Senator GETTO. Many of these small parcels are actually being farmed by actually full time farmers, and I think that Mr. Schank, who is Chairman of County Commissioners, is also one of those farmers who does that, so he can explain that very well to you. These small farms, though, create an environment for family life that is ideal, where children are involved in 4-H, Future Farmers of America, and other agricultural activities.

Because of this attractive quality of life, the Naval Air Station, and the proximity of Fernley to Reno, there has been a rapid growth in the last decade. About 30,000 people live within the Newlands project. About two thirds of these people live in the rural area and have individual shallow wells which could severely be impacted by a reduction of irrigation water in the valley. This could cause a major problem with the water quality. It is of extreme importance how the buy out is implemented to have the least impact on the quality of life.

To this endeavor, the proposed amendment to the bill by FACTS that would involve state agencies with the United States Fish and Wildlife in the water right purchases is of extreme importance to my constituents, the farmers and the rural dwellers who are certainly concerned about how this buy out is accomplished with the least impact on their environment.

I recall Senator Reid's early comments that a negotiated settlement to end the litigation on the Truckee River was of extreme importance. Without it there would never be a resolution, just more and more litigation. I agreed with Senator Reid's efforts to resolve the ongoing litigation, and strongly supported prior legislation that Nevada passed to contribute $8 million towards this settlement. I sponsored also SB189 during the 1989 session, which, if passed by the voters, will provide an additional $5 million to purchase fresh water for the wetlands and several million for wildlife enhancement.

Now I find that S. 1554 is somewhat an unbalanced proposal and does not resolve all of the issues that have caused many decades of litigation, and that farmers on the Newlands project will still be embroiled in lawsuits that could eventually put them out of business. S. 1554 does not resolve the ongoing problems of the Stillwater Indian tribe, which is heavily dependent on the waters of the two river systems, and have been subjected to the broken promises by the Federal Government.

The agriculture in the Newlands project, including the Stillwater Indian reservation, provides about 35 percent of the economy in Churchill County, the Naval Air Station about 45 percent, and the other services about 20 percent. Therefore, agriculture is still a very important segment of our economy, with an estimated $37 million gross in agricultural products. Newlands farmers produce about 150,000 tons, and this is a conservative figure, and there is a misprint in the copy because it says 50 tons. It is 150,000 tons, and I believe closer to 200,000 tons. It feeds the largest group of dairies in Nevada, and thousands of tons of this hay goes to California.

It is also a significant part of the market of hay producers that ship hay to Japan or to the Pacific rim. So it contributes a great deal to reduce the trade imbalance.

In closing, Mr. Chairman, I support consideration of the amendments proposed by FACTS, which will make S. 1554 a more balanced and fair bill, and will definitely go toward resolving the issues which will ensure a more equitable future for all of those in western Nevada.

[The prepared statement of Senator Getto follows:]

VIRGIL GETTO
Senator
Central Nevada District
1400 Lovelock Highway
Fallon, Nevada 89406
Phone 423-3544

COMMITTEES
Chairman
Natural Resources
Member
Commerce and Labor
Taxation

Nevada Legislature
SIXTY-FIFTH SESSION

I AM VIRGIL GETTO, STATE SENATOR REPRESENTING THE CENTRAL NEVADA SENATORIAL DISTRICT AND I AM CHAIRMAN OF THE SENATE NATURAL RESOURCES COMMITTEE.

BEING A LEGISLATOR FOR 22 YEARS AND A FARMER ALL OF MY ADULT LIFE, I AM VERY AWARE OF THE NEEDS TO RESOLVE THE DISPUTES THAT HAVE PLAGUED MY CONSTITUENTS AND THOSE WHO ARE IMPACTED BY THE UPPER TRUCKEE AND CARSON RIVERS. IN CONCEPT, I DO SUPPORT THE ENDEAVORS OF S 1554 AND REALIZE THE TREMENDOUS IMPORTANCE OF THIS BILL TO ALL THOSE WHOSE LIVES ARE EFFECTED BY THE TWO RIVER SYSTEMS. IT IS A MECHANISM TO RESOLVE 80 YEARS OF LITIGATION THAT HAS BEEN AN EXTREME DRAIN ON THE FARMERS AND THE TAXPAYERS OF THAT AREA. I WANT TO GIVE SOME BACKGROUND INFORMATION ON THE AREA I REPRESENT, THE NEWLANDS PROJECT - WHICH IS IMPACTED THE MOST BY S 1554.

I AM A TYPICAL FARMER IN THE NEWLANDS PROJECT, FARMING ABOUT 350 ACRES WHICH HAS SUPPORTED A DAIRY FOR 3 GENERATIONS OF GETTO'S. MY FATHER, AN EMIGRANT WAS ENCOURAGED BY THE BUREAU OF RECLAMATION TO COME TO THE NEWLANDS PROJECT AND BUY RAW LAND AND DEVELOP IT. POSTERS AND ADS BY THE BUREAU DURING THOSE EARLY 1900'S BROUGHT MANY EAGER MEN AND WOMEN WHO WERE WILLING TO WORK HARD PURSUING THEIR AMERICAN DREAM, CARVING FROM THIS RAW LAND, AN OASIS IN THE DESERT, A NICE AGRIBUSINESS ORIENTED COMMUNITY WITH A QUALITY OF LIFE THAT IS GREAT. I WANT TO EMPHASIZE HERE THAT THIS BUREAU OF RECLAMATION PROJECT IS NOT ONE OF THOSE WITH A LOT OF 4 OR 5 THOUSAND ACRE FARMS THAT ARE ALLEDGED TO BEING SUBSIDIZED BY THE TAXPAYERS SUCH AS

THOSE THAT HAVE BEEN IN THE NEWS LATELY. THERE IS NOT A SINGLE LAND OWNER IN THE PROJECT WHO IS SUBJECT TO THE ACREAGE LIMITATION OF THE RECLAMATION REFORM ACT.

I WANT TO MAKE NOTE THAT 1/3 OF THE WATER RIGHTED LAND WAS FARMED BEFORE THE PROJECT WAS COMPLETED, SO THERE WERE ABOUT 21,000 ACRES OF VESTED WATER RIGHTS THAT BECAME PART OF THE PROJECT. AT PRESENT THERE ARE ABOUT 4,000 WATER RIGHT PARCELS.

THERE ARE HUNDREDS OF SMALLER WATER USERS WHO SUPPLEMENT THEIR INCOME WITH THEIR SMALL FARMING OPERATIONS, WHICH CREATES A QUALITY OF LIFE THAT IS SUPERB. THE SMALL FARMS CREATE AN ENVIRONMENT FOR FAMILY LIFE THAT IS IDEAL WHERE CHILDREN ARE INVOLVED IN 4-H, FUTURE FARMERS OF AMERICA, AND OTHER AGRICULTURAL ACTIVITIES. BECAUSE OF THIS ATTRACTIVE QUALITY OF LIFE, THE NAVAL AIR STATIONN, AND THE PROXIMITY OF FERNLEY TO RENO, THERE HAS BEEN A RAPID GROWTH IN THE LAST DECADE. ABOUT 30,000 PEOPLE LIVE WITHIN THE NEWLANDS PROJECT. ABOUT 2/3 OF THESE PEOPLE LIVE IN THE RURAL AREA AND HAVE INDIVIDUAL SHALLOW WELLS, WHICH COULD SEVERELY BE IMPACTED BY A REDUCTION OF IRRIGATION WATER IN THE VALLEY. THIS COULD CAUSE A MAJOR PROBLEM WITH THEIR WATER QUALITY.

IT IS OF EXTREME IMPORTANCE HOW THE BUY OUT IS IMPLEMENTED TO HAVE THE LEAST IMPACT ON THE QUALITY OF LIFE. TO THIS ENDEAVOR, THE PROPOSED AMENDMENT TO THE BILL BY FACTS THAT WOULD INVOLVE STATE AGENCIES WITH USF&WS IN THE WATER RIGHT PURCHASES IS OF EXTREME IMPORTANCE TO MY CONSTITUENTS, THE FARMERS, AND RURAL DWELLERS WHO ARE CERTAINLY CONCERNED ABOUT HOW THIS BUY OUT IS ACCOMPLISHED WITH THE LEAST IMPACT ON THEIR ENVIRONMENT.

I RECALL SENATOR REID'S EARLY COMMENTS THAT A NEGOTIATED SETTLEMENT TO END THE LITIGATION ON THE TRUCKEE RIVER WAS OF EXTREME IMPORTANCE. WITHOUT IT, THERE WOULD NEVER BE A RESOLUTION - JUST MORE AND MORE LITIGATION. I AGREED WITH SENATOR REID'S EFFORTS TO RESOLVE THE ONGOING LITIGATION AND STRONGLY SUPPORTED AB 900, ONE OF THE CRUCIAL STEPS TO THE PASSAGE OF THIS BILL, AND I ALSO SUPPORTED PRIOR LEGISLATION THAT NEVADA PASSED, TO CONTRIBUTE $8 MILLION TOWARD THIS SETTLEMENT. I SPONSORED SB 189 DURING THE 1989 SESSION, WHICH IF PASSED BY THE VOTERS, WILL PROVIDE AN ADDITIONAL $5 MILLION TO PURCHASE FRESH WATER FOR THE WETLANDS AND SEVERAL MILLION FOR WILDLIFE ENHANCEMENT. NOW, I FIND THAT S 1554 IS AN UNBALANCED PROPOSAL AND DOES NOT RESOLVE ALL OF THE ISSUES THAT HAVE CAUSED MANY DECADES OF LITIGATION, AND THAT FARMERS ON THE NEWLANDS PROJECT WILL STILL BE EMBROILED IN LAWSUITS THAT COULD EVENTUALLY PUT THEM OUT OF BUSINESS.

S 1554 DOES NOT RESOLVE THE ONGOING PROBLEMS OF THE STILLWATER INDIAN TRIBE WHICH IS HEAVLY DEPENDENT ON THE WATERS OF THE TWO RIVER SYSTEMS AND HAVE BEEN SUBJECTED TO BROKEN PROMISES BY THE FEDERAL GOVERNMENT.

THE AGRICULTURE IN THE NEWLANDS PROJECT, INCLUDING THE STILLWATER INDIAN RESERVATION, PROVIDES ABOUT 35% OF THE ECONOMY IN CHURCHILL COUNTY, THE NAVAL AIR STATION ABOUT 45% AND OTHER SERVICES ABOUT 20%. THEREFORE, AGRICULTURE IS STILL A VERY IMPORTANT SEGMENT OF OUR ECONOMY WITH AN ESTIMATED $37 MILLION GROSS IN AGRICULTURAL PRODUCTS. NEWLANDS FARMERS PRODUCE ABOUT 50 TONS OF ALFALFA HAY THAT FEEDS THE LARGEST GROUP OF DAIRYS IN NEVADA WITH THOUSANDS OF TONS GOING TO CALIFORNIA DAIRYS. HAY GROWERS ON THE PROJECT HAVE DEVELOPED A SIGNIFICANT MARKET TO THE PACIFIC RIM COUNTRYS WHICH HELPS REDUCE OUR TRADE IMBALANCE.

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IN CLOSING, I SUPPORT THE AMENDMENTS PROPOSED BY FACTS WHICH WILL MAKE S 1554 A MORE BALANCED AND FAIR BILL AND WILL DEFINITELY GO FURTHER IN RESOLVING THE ISSUES, WHICH WILL ENSURE A MORE EQUITABLE FUTURE FOR ALL OF WESTERN NEVADA.

Senator BRADLEY. Thank you very much, Mr. Getto.
Mr. Schank.

STATEMENT OF CYRIL SCHANK, CHAIRMAN, BOARD OF CHURCHILL COUNTY COMMISSIONERS

Mr. SCHANK. Thank you. My name is Cyril Schank, Chairman of the Churchill County Board of Commissioners. I am very happy to be here today. It is a new experience for me to sit on this side. I do represent the citizens of Churchill County and of the City of Fallon. Also I want to thank Joe Dini and Virgil Getto, our State Speaker of the House, the Assembly, and Virgil, and they sit on opposite political fences but they are great men. I know them well, and they are fine citizens. Twenty-four years of service, each of them, since they started out. I request that my formal statement be entered into the record, and I will just hit a few highlights here.

I want to commend you and Senator Reid for holding these hearings and giving us the opportunity of addressing these problems of water allocations and distribution in western Nevada. Unfortunately the bill as written falls short of the stated goals. It does not address the problems to settle lawsuits, and it creates tremendous downstream burdens, and it threatens the life for over 30,000 people, the quality of life that they have.

I will particularly address the potential economic and environmental impacts of the bill. I do want to reiterate, we do have strong support so far for the objectives of the bill, which are very good. With constructive amendment the bill can be the vehicle to settle long standing disputes for all people on the Carson-Truckee River system.

The recent introduction of H.R. bill 23941 by Congressperson Barbara Vucanovich more equitably addresses the issues and includes all parties. We will work to help resolve the differences between the two bills. We will seek for balanced legislation.

Now, Churchill County, we endorse the testimony of the FACTS coalition, and this stands for fair allocation of the Carson-Truckee system. This group is comprised of both Lyon and Churchill counties, the City of Fallon, Town of Fernley, Fernley Town Utilities, TCID, Churchill Economic Development Authority, Citizens for Thriving Enterprise, and Lahontan Valley Water Users Association. I might mention we have worked very close in this organization with the Fallon Paiute-Shoshone Tribes.

Churchill County is located in west central Nevada, I am sure you know that. The county is, I believe, the fifth largest in the State, over three million acres, only 13 percent is private ownership, which is 400,000 acres is in private ownership, the lowest assessed valuation per capita in Nevada.

It is difficult to sell bond issues. It is very obvious now we are going to try to sell on retainer. I think it will go through, but we have to put overrides on the tax to do this. It requires high tax rate, more than average per capita income. Now, these factors will impose a severe hardship upon our community resulting from direct or indirect changes if S. 1554 passes as written.

It is already stated our rainfall is only about five inches or less a year, yet we rank in the top few counties in the State for the total farm cash receipts, which contributes substantially to local economy. And Newlands project is the reason for this good economy and all that we do have, which is operated by TCID. It is called the oasis in Nevada, and I would like to compare it with Boise, Idaho.

I think the two are very comparable, and there is elevations in farming. I love both areas. I have never lived there, but I have gone through it, and I think it is a great area also. It is all because of irrigation, and this irrigation enhances property values and our way of life. People like to live there in our community, and that is why we are a growing community, as well as I am sure that is why the Naval Air Station settled there in about 1942. I was just a young man of 12 years old, I remember those A6s flying over pretty low, right over our place, and I do still farm that same place.

The bill overlooks economic impacts to our area with the purchase of water right for the wetlands. We must maintain economic viability of ranching and farming. I would like to mention my son and I are now partners in farming operation. My dad and I were until about 20 years ago, and now my son and I, and his son is 16 years old now and probably will be taking over the farm. But we farm some 600 acres, of which 300 are owned in one unit and the others about six ranches that are scattered throughout the valley. In order to be economically feasible we have to have equipment to operate, and it makes it an economical unit for our two families. And other sons live on the place also, one is a veterinarian and the other is an insurance salesman. They probably do a little better than we do farming, but we love it. And we go about it and do it.

But just to relate to this, it kind of is the same with the valley and TCID. If they give up too much land it goes out of production, it is uneconomical to farm it. That is what it boils down to, and they have to have a viable amount of acres. I will let them address those problems. I get tied up with both of them. I have a dual job here.

But I would like to mention it is extremely expensive for the county to come here today and do what we are doing. It cost us a lot of money, but we think it is well worth it because otherwise we are going to lose the valley. The bill as written ignores environmental impacts, as wells are going bad, it has already been stressed, and two thirds of our population draws potable water from shallow, the shallow aquifers. And another third is a deeper one which the city, the Naval Air Station, the Paiute Tribe has a well. They go down to the deeper one. And that is where the arsenic is. There is arsenic in the others, too, but they have been with us and we have lived with them. But the thing of it is it is getting worse. So water quality and quantity are related, and we support with documents.

We have another letter from State Assemblyman John Marvel, who is Chairman of the Rural Technical Advisory Committee to the Nevada legislature, study of water and wastewater resources in the state. And this further bears out the collective concerns on the need to protect the groundwater. And I ask that that be submitted.

Senator BRADLEY. Okay. Mr. Schank, can you conclude here, because we don't want to take the Speaker's time.

Mr. **Schank**. The main thing we want to do and see in the bill is mitigation for the losses that come to the county, and that we do endorse objectives of S. 1554, and we cannot support the bill without the amendments to treat all equally. Thank you very much.

[The prepared statement of Mr. Schank follows:]

TESTIMONY OF CYRIL SCHANK

CHAIRMAN, BOARD OF CHURCHILL COUNTY COMMISSIONERS
FALLON, NEVADA

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON WATER AND POWER

REGARDING S.1554

FEBRUARY 6, 1990

Mr. Chairman and members of the committee. My name is Cyril Schank, Chairman of the Board of Churchill County Commissioners, Fallon, Nevada. I am happy to be before the committee today to discuss the potential impacts of S.1554 on the citizens of Churchill County and the City of Fallon. Thank you for inviting me.

Mr. Chairman, I request that my formal written statement be made part of the record and with your permission I will summarize it now.

First I would like to commend you and Senator Reid for addressing the problems with water allocation and distribution in Western Nevada and for holding these hearings. Unfortunately, I am here to say that the bill falls far short of its stated goals. It does not address the problems or settle the lawsuits involving the downstream users of the Truckee/Carson system. Instead, it would create tremendous burdens for our communities and threaten the way of life for over 30,000 people.

In particular, I will address the potential environmental and economic impacts of the bill.

We wish to reiterate our strong support for the objectives of this bill and feel that, with constructive amendment, Senate Bill 1554 may indeed be the vehicle whereby a settlement to the long-standing issues on the Truckee and Carson River system can be resolved to the benefit of all persons.

We have recently become aware of the introduction, by Congressman Barbara Vucanovich, of H.R. 3941, a bill which more equitably addresses the issues and includes parties which have not been considered in S.1554. We will work to help resolve the differences between these bills and seek a balanced piece of legislation.

Churchill County also wishes to endorse all testimony relative to S.1554 offered for your consideration by those affiliated with the FACTS Coalition (Fair Allocation of the Carson-Truckee System). FACTS is comprised of such organizations as Lyon County, Churchill County, the City of Fallon, the Town of

Fernley, the Fernley Town Utilities, the Truckee-Carson Irrigation District, the Churchill Economic Development Authority, the Citizens for Private Enterprise and the Lahontan Valley Water Users Association. Additionally, FACTS has closely and cooperatively worked with the Fallon Paiute Shoshone Tribes.

Mr. Chairman, we have included the FACTS Coalition statement with our written statement and ask that it be made a part of the record. Suggested revisions to S.1554 contained in our testimony are stated in the FACTS Coalition statement identified as Appendix A.

CHURCHILL COUNTY

Churchill County is situated in west central Nevada. The City of Fallon is the county seat and is located approximately 65 miles east-southeast from Reno and 63 miles east of Carson City.

The county is approximately 4,800 square miles or slightly over three million acres in area. However, of that total area, only some 13 percent is in private ownership or approximately 400,000 acres.

As a result of the relatively low amount and value of privately held property in Churchill County, we have the lowest per capita assessed valuation of any county in Nevada.[1] Consequently, it is difficult to sell bond issues for the construction of infrastructure due to the relatively high tax rate required to fund debt service and the lower than average personal income in Churchill County.[2] These factors couple to impose severe hardships upon our community resulting from direct and indirect changes we anticipate as a result of the passage of S.1554 as currently written.

Wateresource Consulting Engineers, in a 1977 project report on a domestic water system stated that "Churchill County is one of the most arid counties in the state. The western half of the county, which includes the Carson Desert with a valley floor elevation of some 3,900 feet receives an annual precipitation of less than five inches."[3]

Yet, under these semi-arid conditions Churchill County consistently ranks among the top few counties in the state for total farm cash receipts and other income contributing substantially to our local economy.[4]

The reason for the relative bounty and quality of life in Churchill County stems from the Newlands Project. Irrigation of approximately 63,000 acres results in many benefits to the local economy, the enhancement of property values and maintenance of the overall ecologic regime within the Lahontan Valley.

FEDERAL VERSUS STATE WATER LAW

The County previously noted a number of concerns on S.1554 relative to specific issues which were brought to the attention of Senate staff when they toured the Truckee River system in November of 1989. These issues include the matter of ensuring state sovereignty in the determination of water and water right transfers as contemplated in Title I, Sec. 103 THE TRUCKEE RIVER, wherein a water right is federally mandated to the Pyramid Lake Paiute Tribe; Title III, Sec. 301 AUTHORIZATION TO PURCHASE WATER RIGHTS-, and Title IV, Sec. 401(a) ALTERNATIVE OUTLEASE PROGRAM-,

Additionally, the authorization contained in Sec. 301(a) allowing the Secretary to purchase water rights from the Newlands Project coupled with the unrestrained authority of the Secretary to "transfer, hold, resell, or otherwise dispose of such water rights and related interests to benefit Federal and State wildlife areas in the Lahontan Valley and the Fernley Sink in Nevada in accordance with the provisions of this section", could be construed to allow the Secretary to exchange water slated for removal from the Truckee River to artificial wetlands created for effluent disposal from the Reno/Sparks water treatment facilities, utilizing Newlands Project water intended for direct application to wildlife acreage in these locations.

We certainly do not think that this is the intent of the bill and would suggest appropriate language to ensure that there can be no mistake regarding the intended use of this water source. This concern is again reinforced in suggested language modifications to Sec. 301(b)(3).

THE BILL IGNORES ECONOMIC IMPACTS

Churchill County is vitally interested in retaining the economic viability of the ranching and farming interests within the Lahontan Valley. We suggest that Sections 301(b)(1) and (2) be amended to control district operating costs and maintain the integrity of county land use planning and zoning.

Sec. 301(b) 1 through 4 as drafted, outlining conditions for purchase of water rights and related interests completely ignores the economic losses which will be incurred by the various local governmental entities or economic burdens shifted to private taxpayers as a result of the federal government purchasing land and water rights. We feel that some mechanism must be provided which mitigates these substantial losses or burden shifts. As an example, the magnitude of only one small element of shifted revenue burden attributable to local ad valorem taxes (property taxes) can be demonstrated as follows: assume as the bill requires, that the Secretary purchases $16 million dollars of water rights and water-righted land and assume that a commensurate amount of appraised value is removed from the tax rolls; in this case, lost revenue to local government (school district, county and the mosquito abatement district) which would be assumed by property taxpayers in Churchill County could exceed $30 million dollars over a 50 year period (see Appendix B). This example assumes current year tax rate with a 6% annual revenue growth to local government on property which existed on the rolls as of the prior fiscal year (NRS 354.59811).

As noted, state statutes provide a 6% annual increase in revenues on property existing on the prior year tax roll. The net effect of this statute is to increase tax rates upon those parcels remaining in private ownership as federally purchased property is removed from the tax rolls. This unfairly burdens local residents as a result of a national policy to preserve endangered species, wetlands and wildlife.

I might suggest that the Secretary may dispose of property purchased for water rights to private developers, and thus generate ad valorem tax revenues to local government. However, that fails to address the marginal suitability of the land in the first place, plus development constraints (zoning laws) placed upon rural lands far removed from adequate public services (police, fire, schools, etc.).

I would like to ask that the bill be amended to mitigate effects upon our local residents through some form of offsetting payments which could be applied to reduce local property tax rates.

THE BILL IGNORES ENVIRONMENTAL IMPACTS

The water right purchase program in Sec. 301 and the elimination of the Navy agricultural outlease program and removal of water as contemplated by Sec. 401, may adversely affect ground water quality and recharge.

Gross reduction or cessation of irrigation water applied to agricultural lands in the Lahontan Valley will affect water quality and quantity for our residents. It was estimated that in 1977 there were 3,000 to 4,000 shallow domestic wells in the unincorporated areas surrounding the City of Fallon in Churchill County.[5] Since that time population in the unincorporated areas has increased 40 percent with the result that there are now 4,200 to 5,600 shallow wells. Fully two-thirds of our population derives their only source of potable water from wells generally less than fifty feet in depth.

A study performed by the U.S. Geological Survey in 1980 stated "Irrigation is seasonally related to river flows, and shallow-aquifer water levels fluctuate in response to changing river flows and rates of irrigation. The phase relations between water-level rises or falls in the shallow aquifer and increases or decreases in irrigation or surface-water flows depend on a large degree on the lateral proximity of wells to the river, canals, or irrigated fields. Seasonal water-table fluctuations of the shallow aquifer commonly ranged from more than 2 ft.

throughout much of the irrigated area to as much as 6 ft. locally. In contrast, they often fluctuated less than a foot, and in some places less than half a foot in desert areas. Seasonal water-table fluctuations indicate changes in ground-water storage within the shallow-aquifer system; the estimated annual storage changes in turn approximate annual recharge to and discharge from the shallow aquifer. During the study period, the recharge and discharge were estimated on the order of 25,000-30,000 acre-ft/yr each, which is 7-8 percent of the average annual flow rate of river and canal water into the study area."[6] This would seem to suggest that the shallow aquifers are very sensitive to variations in irrigation practices.

The report goes on to further state "the proximity of the shallow aquifer to the land surface renders it particularly vulnerable to pollution by man. This pollution poses the further hazard that deeper aquifers will in turn become polluted."[7] The residents of the City of Fallon, Naval Air Station, Fallon, the Fallon Paiute Shoshone Tribe, and Kennametal Corporation derive municipal and industrial water from a deeper fractured basalt aquifer of limited aerial extent at a depth of 500 feet.

The report indicates that salinity and other chemical concentrations in the shallow aquifer are seasonally related to recharge pulses.[7] We therefore are extremely concerned that as water right purchases continue, the amount of irrigation water applied for crop production will decrease, thereby reducing infiltration into the shallow aquifer. Since pollution loading is related to water quantity, the lower the rate of recharge, the greater the concentration of pollutants. Given the interrelationship of the shallow and deeper aquifers in the Lahontan Valley, it is only a matter of time before pollutant loadings would increase generally throughout the entire source of potable groundwater.

We very strongly urge the amendment of S.1554 to include provisions for mitigation of impacts anticipated to ground water supplies. Since most banks and lending institutions in our community issue mortgages contingent upon adequate water quality, property values may be compromised further impacting our residents.

Churchill County has investigated alternate water supplies. A domestic water planning report prepared for Churchill County in 1977[8] suggested that the best alternative would be utilization of Lahontan Reservoir as a source of municipal and industrial water. Based on estimates at that time, implementation of such a system today could exceed $40 million thereby making it economically unfeasible.

Exorbitant bond-debt requirements coupled with ready availability of relatively cheap ground water supplies have served to forestall development of this project.

We therefore recommend language for insertion into the bill to provide mitigation of potential losses to the areas most affected by the proposed legislation lying below Derby Dam on the Truckee River appearing as Sec. 301(b)(6) in the FACTS amendments attached hereto.

THE BILL'S ENVIRONMENTAL IMPACTS SHOULD BE STUDIED AND MITIGATED

We, want to stress our desire to foster an atmosphere of cooperation which must begin with a comprehensive environmental impact analysis encompassing the entire range of water reallocation proposals currently before us.

There is certainly precedence for such a request. The most recent example stems from the need to consolidate the various proposals to withdraw military airspace and training ranges in Nevada. Through the excellent efforts of our governor, a comprehensive "Nevada Report" encompassing a study of the cumulative effects of numerous air space and land withdrawals for military purposes has been commenced.

The need to mitigate losses to our residents and community will clearly become evident once a comprehensive environmental study has been completed. We have neither resources nor staff to adequately analyze and quantify the losses, let alone the where-with-all to finance mitigations such as a water system and programs to shore up economic impacts which may result from proposals contained in S.1554.

CONCLUSION

Churchill County wholeheartedly endorses the stated objectives of S.1554, but without consideration of amendments which treat the parties on the river system in a fair and equitable manner, there can be no settlement of 80 years of water disputes. Therefore we urge the members of this subcommittee to fully consider the importance of including mitigation arising as a result of the implementation of this bill.

REFERENCES CITED

(1) State of Nevada Office of Community Services, Nevada Statistical Abstract 1988, p. 268

(2) State of Nevada Office of Community Services, Nevada Statistical Abstract 1988, p.146

(3) Wateresource Consulting Engineers, Project Report in Connection with Churchill County Domestic Water System May, 1977, p.3-1

(4) State of Nevada Office of Community Services, Nevada Statistical Abstract 1988, p.361

(5) U.S. Geological Survey, Geohydrology of the Basalt and Unconsolidated Sedimentary Aquifers in the Fallon Area, Churchill County, Nevada, Open-File Report 80-2042, p.88

(6) U.S. Geological Survey, Geohydrology of the Basalt and Unconsolidated Sedimentary Aquifers in the Fallon Area, Churchill County, Nevada, Open-File Report 80-2042, p.88-89

(7) U.S. Geological Survey, Geohydrology of the Basalt and Unconsolidated Sedimentary Aquifers in the Fallon Area, Churchill County, Nevada, Open-File Report 80-2042, p.89

(8) Wateresource Consulting Engineers, Project Report in Connection with Churchill County Domestic Water System May, 1977, p.5-11

APPENDIX A

TESTIMONY OF THE COALITION FOR
FAIR ALLOCATION OF THE CARSON AND TRUCKEE SYSTEMS (FACTS)

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON WATER AND POWER

REGARDING S.1554

FEBRUARY 6, 1990

APPENDIX A

FACTS

A Coalition for Fair Allocation of Carson and Truckee Systems

(702) 423-5136
Fax: 423-0717

190 W. First St.
Fallon, Nevada
89406

January 16, 1990

Honorable Harry Reid
United States Senator
708 Hart Building
Washington, D.C. 20510

Attn: Wayne Mehl

Dear Wayne:

FACTS is a recently formed regional coalition of governing bodies and organizations which have direct and immediate interest in a proper and permanent solution to the Truckee and Carson River water problems.

At the outset, the Coalition set as its general goal: To preserve the quality of life of all the people that are dependent upon the waters of the Carson and Truckee Rivers.

Among the organizations participating in this effort have been Churchill County, Lyon County, the City of Fallon, the Town of Fernley, the Fernley Town Utilities, the Truckee-Carson Irrigation District, the Churchill Economic Development Authority, the Citizens for Private Enterprise, and the Lahontan Valley Water Users Association. In addition, FACTS has worked closely and cooperatively with the Fallon Paiute-Shoshone Tribe.

While each entity involved has its separate specific needs, we have a common consensus in support of the stated intentions of S.1554, as introduced:

1. Settlement of the interstate water allocations between the states of Nevada and California;
2. An end to the prolonged water litigation on the Truckee and Carson Rivers;
3. Protection and restoration of wetlands in the Lahontan Valley;
4. Recovery of the threatened and endangered species in the Truckee River and Pyramid Lake;
5. Upstream storage for drought relief in the Truckee Meadows;
6. Recognition of Federal trust responsibility and settlement of claims with the Fallon Tribe.

Honorable Harry Reid
United States Senator
Attn: Wayne Mehl
January 16, 1990
Page 2

At the same time, however, we recognize, as did the Senator at the point of introduction, that certain amendments are necessary in order to completely achieve S.1554's objectives and prepare to mitigate the impacts caused directly or indirectly by the proposed legislation.

As communities and entities that are vitally dependent on the waters of the Truckee and Carson Rivers, we therefore enclose proposed amendatory language to S.1554. In addition, the Fallon Tribe will be submitting its own proposed amendments, which in almost all respects, are consistent with FACTS' proposal.

We sincerely hope you will accept these recommendations in the same spirit in which they are presented, namely to seek a full and equitable solution for all parties affected by the legislation.

Sincerely,

Jim

JIM BENTLEY
FACTS Coalition Coordinator

JB:wg

cc: FACTS Coalition Participants
Attachments

AMENDMENTS

TITLE I - INTERSTATE WATER APPORTIONMENT PROVISIONS.

The Coalition respects the judgement of California and Nevada as to Interstate Apportionments, and we recommend that their agreed upon language replace the existing Title I with a minor change in section 103(d). The following language is recommended:

> SEC. 103. THE TRUCKEE RIVER.
>
> (d) EFFECT OF STATE ALLOCATIONS. The allocation of water to California and Nevada under sections 102 and 103 shall not, in whole or in part, form the basis for additional claims of water from any water rights holder to benefit Pyramid Lake, the Pyramid Lake Fishery, or lands within the Pyramid Lake Indian Reservation, and, in determining any such claim, it shall be presumed that the water available to the Pyramid Lake Fishery is that which would have been available had sections 102 and 103 not set forth such allocations.

TITLE II - TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

The purpose of the Legislation is to settle the litigation that has been ongoing and not to create more. This is a goal that has been repeated as a primary objective of the legislation; a goal to which no reasonable person would be opposed. Therefore, we believe that the Washoe County Water Conservation District, the Truckee-Carson Irrigation District, and the Fallon Tribe should be added as parties signatory to the Operating Agreement. The first two were parties to the 1935 Truckee River Agreement, which will in some respects be altered, and all three parties may be affected by such alterations.

The Fallon Paiute-Shoshone Tribes, with a resident population larger than that of the Pyramid Lake Tribe, have legitimate claims that have not been fulfilled. They have substantial water rights, and while served by Newlands Project, the Fallon Tribe is not part of the Irrigation District. We believe they should be recognized as a signatory to the legislation.

It is in this spirit of settling the water wars that these added parties are seeking benefits under the bill and would have the same incentives as other parties in supporting the passage of the bill and an operating agreement to accomplish it.

Further, in seeking a settlement of all existing litigation, we believe that all parties to the current OCAP litigation before Judge Thompson in the Federal District Court in Reno, should agree upon an OCAP for the Newlands Project.

The following amendments to Title II, Section 201 are recommended:

> SEC. 201. IMPLEMENTATION OF MANAGEMENT AGREEMENT.
>
> The Secretary shall enter into such contracts and take such actions as are required to carry out the terms and provisions of the Preliminary Settlement Agreement and the Operating Agreement, including~~,~~ without limitation, contracts for the use of space in Truckee River Reservoirs for purposes of storing and exchanging water, Provided, That--
>
> (a) California, Nevada, the Pyramid Tribe, the Fallon Tribe, Sierra Pacific Power Company, the Secretary, the Washoe County Water Conservation District, and the Truckee-Carson Irrigation District have formally approved the Operating Agreement; provided, however, that, should any party arbitrarily refuse to approve the operating agreement, it shall be considered fully executed without such party's signature;
>
> (b) The Orr Ditch Court and Truckee River General Electric Court have approved any proposed modifications in river operations, including storage and exchange of water, that would modify any provision in the Orr Ditch Decree or the Truckee River General Electric Decree; provided further, that neither court shall approve any such modification if it would impair, diminish, or burden any water rights on the Truckee River, or its tributaries, except for those rights that are expressly relinquished by the parties to the Operating Agreement;
>
> (c) all applicable requirements of state law and procedures regarding the transfer and use of water rights, including all required State approvals, are met;
>
> (d) all applicable dam safety and flood control requirements are met;
>
> (e) all storage and releases required to satisfy the rights set forth in the Orr Ditch Decree and the Truckee River General Electric Decree are met; and
>
> (f) Newlands Project Operating Criteria and Procedures agreed upon by the State of Nevada, the Pyramid

Tribe, the Fallon Tribe, the Newlands Project Water Users, and the Truckee-Carson Irrigation District are adopted by the Secretary.

SEC. 203. PROTECTION OF TRUCKEE RIVER RIGHTS

One of Senator Reid's original positions was that other water users on the Truckee River would not be impacted or adversely affected by the bill. This protection was also included in AB900 by the 1989 session of the Nevada state legislature.

The following amendment is recommended:

SEC. 203.

Nothing in this title, the Preliminary Settlement Agreement, the Operating Agreement, or in any other agreement made pursuant to this Act, may impair, diminish, or burden any water rights on the Truckee River or its tributaries, (except for those rights that are expressly relinquished), including, but not limited to, the rights of landowners within the Newlands Project or the Fallon Indian Reservation to delivery of the water of the Truckee River to Derby Dam for diversion pursuant to court decree or any applicable regulations. On application of an affected water right holder, the Orr Ditch Court and the Federal Water Master, pursuant to the administrative provisions of the Orr Ditch Decree, and the Truckee River General Electric Court, shall have continuing jurisdiction to ensure that all such water rights are not impaired, diminished, or burdened by this Act or any agreements made pursuant to this Act.

TITLE III - WETLANDS PROTECTION.

This section does not make it clear that purchased water rights are dedicated to the wetlands (see line 22, page 23, of the bill).

We think it should be made clear that the objective is to provide an annual prime water supply (as opposed to return flows) to the wetlands.

The following amendment is recommended:

SEC. 301. AUTHORIZATION TO PURCHASE WATER RIGHTS.

(a) IN GENERAL. The Secretary is authorized to purchase water rights, with or without the lands to which they are appurtenant, to supply prime water (as opposed to return flows) to benefit Federal and State wildlife areas

> in the Lahontan Valley and the Fernley Sink, in Nevada or wetlands on the Fallon Indian Reservation in accordance with the provisions of this section. Water rights purchased under this section shall, to the maximum extent practicable, be used annually for direct application to such wildlife areas and wetlands. Lands purchased under this section shall be held, transferred, or otherwise disposed of to benefit such wildlife areas and wetlands.

SEC. 301(b)(1) and (2).

These sections contemplate limiting the acquisition of water rights to those lands which meet the criteria adopted by the USF&WS in the purchase of water rights under earlier legislation which approved funds for such purpose. We understand the need to limit such purchases and agree with many of the criteria set forth by the USF&WS in their assessment under P.L.100-446. However, the criteria are inflexible.

We would recommend amendments to the sections which allow the USF&WS to establish criteria, knowing their dual responsibilities to both the wetlands and the endangered species, and provide for local input from the State of Nevada Department of Conservation and Natural Resources. These amendments would allow some flexibility for a change in circumstances which might warrant a change in purchase criteria. It is important to keep in mind that the criteria adopted by USF&WS under P.L.100-446 were developed to not only protect the environment but to expedite the early transfer of water to the wetlands. In this regard, there wasn't ample time to reflect upon all possible changes in circumstances and the criteria were only considered temporary.

In suggesting that the State of Nevada Department of Conservation and Natural Resources approve the areas in which purchases can be made, we think a responsible, qualified, and objective state authority should designate the areas where the Secretary could acquire land and water rights. In agricultural communities within the State of Nevada, because of the states arid climate, it is important to retain a cohesive area which is not splintered. This retains the environmentally desirable aspects as well as the economic. It also preserves the rural quality of life. Our amendments are in conformity with the provisions of the interstate allocations as agreed upon by the states of California and Nevada as set forth in section 106(b) "...Such criteria may include, but need not be limited to, requirements for findings by an appropriate officer or agency that a transfer would not unreasonably affect the environment or overall economy of the area from which the use of water or water right is being transferred...".

It is important that the water right purchases also promote water conservation which is a priority for all people of Western Nevada.

The following amendments are recommended.

SEC. 301(b). CONDITIONS.

(1) All water rights purchased must satisfy eligibility criteria adopted by the Fish and Wildlife Service.

(2) All water rights and lands shall be purchased from willing sellers, provided that the Secretary may not make purchases within the Fallon Indian Reservation; and provided further that the Secretary shall solicit and give weight to the views of state and local land use planning agencies in selecting the areas in which purchases will be made.

SEC.301(b)(3).

The following amendment is suggested to clarify the intent of the water right purchases for wetlands and not for exchange or other uses and to strengthen the requirements for following state law in the transfer and use of the water rights.

The following amendment is recommended:

SEC. 301(b).

(3) All water rights purchases shall be contingent upon the transfer of such water rights to the wildlife areas or wetlands described in subsection (a), and all water rights purchased shall be transferred and exercised in accordance with applicable State law and procedures.

SEC. 301(b)(4).

This section was amended to provide for cooperation in the management of the purchased water rights because of the interrelationship between the State of Nevada Department of Wildlife and the USF&WS. It further clarifies how any purchases for the Fallon Indian Reservation Wetlands would be held and administered.

Throughout our proposed additions to S.1554, we have taken great care to address the separate, yet common, concerns of the Fallon Tribe in this effort at solution. We have intended to consistently recognize their special circumstances, including tribal sovereignty.

In this section, our proposed language adjustment is:

> SEC. 301(b).
> (4) All water rights purchased shall be managed by the Secretary through the United States Fish and Wildlife Service in cooperation with the Nevada Department of Wildlife, provided that, water rights purchased to benefit Fallon Indian Reservation wetlands shall be held in trust by the United States for the benefit of the Fallon Paiute-Shoshone Tribes and shall be subject to the supervision of the Secretary through the Bureau of Indian Affairs.

SEC. 301(b)(5).

This section is recommended to ensure that the economic impacts of the water rights purchase program are mitigated to the fullest extent possible. One of the most troubling aspects of the Federal government purchasing water rights and land is the loss of ability to assess, lien, or otherwise tax the Federal governments property. Nevada law requires that all charges be considered in a transfer of water rights from an irrigation district so that the cost to the remaining water users is not increased. Within the Newlands Project, the operation and maintenance expenses need to be paid together with any lost revenues from hydrogeneration that might result. This provision is similar to the requirement in the Preliminary Agreement that requires the U.S. to pay for lost hydrogeneration revenues to Sierra Pacific Power Company but different also because of the Nevada state law which requires such costs to be paid upon transfer of water rights within an irrigation district. The other costs for in-lieu taxes is necessary to keep the counties or other public agencies whole as well as mitigation for potentially creating waste lands out of current agriculture lands.

The following amendment is recommended:

> SEC. 301(b).
>
> (5) The Secretary shall annually reimburse non-Federal entities, including but not limited to, the Truckee-Carson Irrigation District, Churchill County, and Lyon County, for full operation and maintenance charges, for customary land rehabilitation costs, for hydrogeneration revenues foregone or in lieu of receipts, for property tax revenues foregone or in lieu of receipts, and for other costs or losses associated with the purchase and transfer of lands or water rights pursuant to this Section.

SEC. 301(b)(6).

The water right purchase program is intended to focus upon the purchase and transfer of water rights from agricultural lands within the Newlands Project to the Wetlands adjacent thereto. However, such transfers may adversely affect water supplies and social and economic values in Lahontan Valley and on the Fallon Indian Reservation. For example, at the present time, there are several thousand shallow domestic wells which are recharged by the agricultural use of water on the Project. Since the purchase program contemplates the purchase and transfer of several thousand acre feet of water, there is the potential that these shallow domestic wells could be severely impacted. If that occurs, the counties and the Fallon Tribe could be forced to finance expensive domestic piped water distribution systems. In this regard, the following amendments are suggested which provide for a special study and report on these potential impacts and to continuously monitor the effects and mitigate as needed.

The following amendment is recommended:

> SEC. 301(b).
>
> (6) Prior to implementation of the water rights purchase program under this section, and any alternative program for Fallon Naval Air Station lands under section 302, the Secretary shall perform a special study and report on potential adverse impacts of these programs on agricultural, municipal, industrial, and domestic water supplies and social and economic interests and activities in Churchill and Lyon Counties and on the Fallon Indian Reservation. In fashioning and implementing these programs, the Secretary shall adopt measures designed to mitigate such impacts, and shall conduct a continuing monitoring and protection program to monitor, report on, and, as necessary, further mitigate such impacts. Nothing in this subsection shall impair or diminish the jurisdiction and authority of the Nevada State Engineer.

SEC. 301(e).

This section appropriates $16,000,000 for water right acquisition. It is critical to the revitalization of the wetlands that this money be used exclusively for acquisition of water rights, and not associated costs.

The following amendment is recommended:

> SEC. 301.
>
> (e) AUTHORIZATION.--There are hereby authorized to be appropriated such funds as are necessary to carry out the provisions of this section, including $4,000,000 in each of the fiscal years 1991, 1992, 1993, and 1994 earmarked solely for the acquisition of water rights, with or without the lands to which they are appurtenant, for the wildlife areas and wetlands described in subsection (a).

SEC. 302. FALLON NAVAL AIR STATION LANDS AND WATER RIGHTS.

In our considered judgement, any surplus water created through new efficiencies at Fallon NAS would be of substantially greater value to recreation and wildlife interests if it were transferred to the wetlands rather than Pyramid Lake. We are therefore recommending the insertion of section 401 as section 302 and renumbering the original section 302 to 303.

Our reasons for retaining the water within the Lahontan Valley are:

(1) In our opinion, any transfer to Pyramid Lake would be approved by the state only for the Truckee River contribution to the Project supply. Carson River water, which is the major portion of the Project supply, would stay in the basin. So the net amount going to Pyramid would hardly be measurable in relation to the total inflows.

(2) The water belongs to the United States without further cost. So any available water from this source would result in more wetlands water for any given level of water purchase funding.

(3) Any Navy water transferred to the wetlands from this source would reduce the amount of agricultural acreage which would have to be abandoned and reverted to brush land.

(4) Surface application of irrigation water serves to recharge the deep aquifer serving, among others, the Naval Air Station which pumps approximately 230 million gallons annually.

(5) A transfer of the Navy water to the Lahontan Valley wetlands would result in a net benefit to wetlands of the entire quantum of the Naval Air Station water so transferred, whereas Pyramid Lake could not receive more than that portion of the Navy water which is represented by Truckee River water, or only 14% (as stated in the final EIS on the operating criteria for the Newlands project) of the quantum removed from the Naval Air Station--an inefficient use of water.

(6) A transfer of water rights from the Navy to Pyramid Lake would result in reduced storage at Lake Lahontan, thereby diminishing recreational benefits to the state. Six million dollars have been expended by the State of Nevada on capital improvements for recreation at Lake Lahontan.

The following amendment is recommended:

SEC. 302.

(a) ALTERNATIVE AGRICULTURAL OUTLEASE PROGRAM.

Not later than one year after the effective date of this section, as defined in section 603, the Secretary of the Navy, in consultation with and with the assistance of the Secretary, shall develop and implement an alternative program for the lands owned by the United States within the Naval Air Station at Fallon, Nevada, and within the Newlands Project, to replace the current agricultural outlease program. The alternative program shall satisfy the Navy's dust abatement, fire, and foreign object damage safety requirements. In addition, the alternative program shall either:

(1) include reasonable measures designed to reduce water use to the greatest extent feasible and provide for the transfer of that quantum of Fallon Naval Air Station water rights which are not needed as a result of such measures to the wildlife areas and wetlands described in Section 301(a); and/or

(2) make available Fallon Naval Air Station lands and appurtenant water rights to the Fallon Paiute-Shoshone Tribes as part of a negotiated agreement with that Tribe under Section 601(c).

Any transfer of water rights authorized under this subsection shall be made in accordance with State law and procedures.

(b) AUTHORIZATION OF APPROPRIATIONS. There are hereby authorized to be appropriated such funds as are necessary to develop and implement the alternative program for the Naval Air Station in Fallon, Nevada described in subsection (a).

(c) REIMBURSEMENT OF COSTS. The Secretary shall annually reimburse non-Federal entities, including but not limited to, the Truckee-Carson Irrigation District and Churchill County, for full operation and maintenance charges, for customary land rehabilitation, for property tax revenues foregone or in lieu of receipts, and for other costs or losses associated with implementation of the provisions of this section.

TITLE IV - CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM.

As discussed in Title III, we have chosen to move Title IV, Section 401 to Title III, Section 302.

In other words, in that we are proposing the Fallon NAS water revert to the wetlands in the Lahontan Valley, it therefore becomes inappropriate to include this section under Title IV, the cui-ui and Lahontan Trout Enhancement Program.

Section 402 now becomes 401 with amendments.

SEC. 401. RECOVERY PLANS.

Our position is that the Secretary should periodically advise the Congress as to his progress in achieving the cui-ui recovery program.

The following amendment is recommended:

SEC. 401.

(a) IN GENERAL. - Pursuant to section 4(f) of the Endangered Species Act (16 U.S.C. 1533(f)), the Secretary through the United States Fish and Wildlife Service shall revise, update, and implement plans for the recovery of the Pyramid Lake Fishery. Such plans shall be completed not later than one year after the date of enactment of this Act. The reports required by section 4(f)(3) of the Endangered Species Act (16 U.S.C. 1533(f)(3)) shall describe specifically the extent to which recovery of the Pyramid Lake Fishery has been achieved, continuing needs for plans adopted under this section, any need for adjustments in such plans, and the accrued and projected costs for development and implementation of such plans.

SEC. 401(b).

Although the majority of the criteria proposed are acceptable, our position is that it is important to consider (a) the survival interaction of the cui-ui and the Lahontan Cutthroat Trout, and (b) the problem of the cui-ui and the Tahoe Sucker, which might endanger a pure strain of cui-ui.

The following amendment is recommended:

SEC. 401.

(b) CRITERIA FOR DEVELOPING REVISED PLANS.--In developing the recovery plans pursuant to subsection (a), the Secretary shall, in a manner consistent with the provisions of the Endangered Species Act, as now in force or hereafter amended:

(1) take account of, include, and make the plans subject to and consistent with the provisions of the interstate allocations described in title I, any additional agreements authorized under title I, the Preliminary Settlement and Operating Agreements authorized under title II, and the storage agreement authorized under Section 602 (d) provided, that the interstate allocations described in, and any additional agreements authorized under this Act I shall not, in whole or in part, form the basis for any recovery plan provision which seeks additional water from any water right holder;

(2) take account of other programs for the enhancement of the Pyramid Lake Fishery, including those programs managed by the Pyramid Tribe, or its subordinate organizations, and, to the extent of his authority, ensure that such programs are consistent with recovery;

(3) consider water quality needs in the lower Truckee River and Pyramid Lake;

(4) consider possible habitat improvements in the lower Truckee River;

(5) consider possible access improvements to the mouth of the Truckee River;

(6) establish a schedule which is designed to achieve implementation of the recovery plan for the Pyramid Lake Fishery;

(7) consider measures not detrimental to the recovery of the cui-ui, to aid the recovery of the Lahontan cutthroat trout by increasing the number and size of juvenile Lahontan cutthroat trout recruited to Pyramid Lake through natural reproduction where possible, or through construction or expansion of hatcheries and related facilities; and

(8) consider other actions consistent with the allocations described in sections 101, 102, and 103 and the Operating Agreement that might enhance recovery of the Pyramid Lake Fishery; and

(9) consider the implications on recovery of the cross-propogation between the cui-ui and the Tahoe Sucker.

SEC. 401(c). PROTECTION OF RIGHTS.--The Secretary shall adopt no recovery plan provision which would impair, diminish, or burden any water rights.

SEC 401(d).

The cui-ui recovery has a very high priority with the Congress, the Secretary, the State of Nevada, the Pyramid Tribe, FACTS Coalition, and many environmental groups.

The responsibility for cui-ui recovery lies with the Secretary, both because of his tribal trust responsibility and his obligations under the Endangered Species Act.

Notably, absent from S1554 is any funding proposal which would permit the Secretary to aggressively pursue this challenge. Certainly there is no inference in the $75,000,000 grant to the Pyramid Tribe that any tribal money would be spent for recovery, nor should there be. Any grant to the Pyramid Tribe should stand on its own merits as to value received in return.

No one knows what will ultimately be involved in cui-ui recovery. It is probably safe to say that the effort will extend over a long period of time.

Accordingly, the following amendment is recommended:

SEC. 401.

> (d) AUTHORIZATION OF APPROPRIATIONS.--There are hereby authorized to be appropriated $20,000,000 to be applied to development and implementation of the recovery plans required by this section, provided that these funds shall be considered as construction funds for use in improving or expanding fish hatchery facilities, spawning access and delta improvements, and other facilities identified in the recovery plans as necessary and sufficient to accomplish the recovery of the Pyramid Lake Fishery. At the point of recovery, any funds remaining from this authorization shall be returned to the Treasury of the United States.

TITLE V - SETTLEMENT FUNDS AND PROVISIONS.

SEC. 501. PYRAMID LAKE FUND.

Historically, in the dismissal of Indian litigation, settlements have been based upon a monetary *quid pro quo*.

Our position is that a grant to the Pyramid Tribe should be based upon concessions made by the Pyramid Tribe which are important to other parties, including the United States. The most important of these is a final settlement of all existing litigation.

The following amendments are recommended:

SEC. 501.

> (a) There is hereby established with the Treasury of the United States the "Pyramid Lake Paiute Tribal Development Fund" as consideration for a full and permanent settlement of all existing claims and litigation identified in Section 601(a) concerning Truckee River water to which the Pyramid Tribe is a party.
>
> (b) There is authorized to be appropriated to the Pyramid Lake Tribal Development Fund $........ together with interest accruing from the effective date of this title at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on the outstanding Federal obligations of comparable maturity. After the effective date of this Title, the Secretary of the Treasury shall: (1) allocate and make

available such moneys from the trust fund as are requested by the Tribe; (2) invest any moneys not so allocated to the Tribe and remaining in the trust fund in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C.162a); and (3) allocate and make available such interest from the trust fund as is requested by the Pyramid Tribe.

(c) All of the Funds appropriated pursuant to this section shall be invested or used for economic development for the Tribe, provided that no such funds may be used to acquire lands or water rights within the Newlands Project or the Fallon Indian Reservation.

(d) Subject to subsection (c) and notwithstanding any other provision of law, the Pyramid Tribe shall have complete discretion to invest and manage the funds appropriated pursuant to this section, provided that the United States shall not bear any obligation or liability regarding the investment, management or use of such funds that the Pyramid Tribe elects to invest, manage or use.

SEC. 502. NEVADA SETTLEMENT FUND AND OTHER PROVISIONS.

This suggested Section is new to the bill. Basically, it provides for a full settlement of existing litigations and controversies.

The State of Nevada, which has a strong interest in full settlement, has authorized an $8,000,000 bond issue, to be used with federal matching money to accomplish fishery benefits and capital improvements to effect water savings.

Our position is that it is in the interest of everyone to pursue a full settlement at this time. Many benefits to many interests would result from the authorization of such a fund.

The following new section amendment is recommended:

SEC. 502.

(a) REPAYMENT CANCELLATION.--Notwithstanding any other provision of law, all repayment obligations owing to the United States or any of its agencies by the Truckee-Carson Irrigation District shall be cancelled by the Secretary, provided that Truckee-Carson Irrigation District shall have the right to collect all unpaid construction costs.

(b) NEVADA SETTLEMENT FUND.

(1) There is hereby established in the United States Treasury a fund to be known as "the Nevada Settlement Fund". This fund shall consist of:

(a) $8,000,000 to be contributed by the State of Nevada;

(b) amounts to be appropriated to this fund; and

(c) interest accruing to this fund pursuant to subsection (b)(4).

(2) There is hereby authorized to be appropriated to the Nevada Settlement Fund the sum of $16,000,000. Funds appropriated pursuant to this section shall remain available until expended. No disbursements shall be made from this fund without the prior approval of the State of Nevada and the Secretary.

(3) The source of any moneys expended from this settlement fund shall be deemed to be one-half from the amount contributed by the State of Nevada and one-half from the funds appropriated pursuant to subsection (b)(2) until an aggregate amount of $16,000,000 has been expended. All moneys expended in excess of $16,000,000 shall be deemed to be Federal funds.

(4) Such portions of this settlement fund as the Secretary determines are not required to meet current withdrawals shall be invested by the Secretary of the Treasury in public debt securities of the United States with maturities suitable to the needs of this settlement fund, taking into consideration the average market yield on the outstanding federal obligations of comparable maturities.

(5) These funds are to be used for any combination of the following purposes:

(a) The improvement or alteration of the physical facilities within Carson Lake and the Stillwater Wildlife Management Area, including their delivery systems,

(b) the rehabilitation and improvement of cui-ui spawning habitat within the Lower Truckee River not otherwise accomplished under the provisions of section 401(d); and

(c) the rehabilitation of Derby Dam, expansion of the Truckee Canal, and improvements to the Newlands Project facilities and operations designed to conserve water by improving delivery efficiencies.

TITLE VI - MISCELLANEOUS PROVISIONS.

SEC. 601. CLAIMS SETTLEMENT.

As previously indicated, we strongly support a settlement of existing litigation.

Since 1970, all parties have spent an enormous amount of money fighting court battles concerning the Truckee and Carson Rivers. These battles are still ongoing with no end in sight.

The United States, between the Department of Justice, the Solicitor of the Department of Interior, and the Bureau of Indian Affairs (which finances the Pyramid Tribe's legal advocacy) has spent many millions. The Nevada Attorney General has spent a substantial amount of Nevada taxpayer's money over the years, and is still expending additional funds.

Sierra Pacific Power has had continuing legal expenses for many years protecting its interests, as has TCID.

Nobody wins in this atmosphere. Senator Reid and the Congress would perform a great public service if the 80-year old water wars were put to rest once and for all.

In addition to the lawsuits, claims and actions dismissed as listed in sec. 601(a), we recommend that upon agreement of the parties thereto the OCAP litigation be dismissed with prejudice; the litigation involving the reclassification of bench and bottom lands should be dismissed with prejudice; the cases involving Stampede credit water, the Secretary's authority to approve water right transfers by overriding the State Engineer, and the appeal of the State Engineer's rulings in the transfer of water rights should all be dismissed with prejudice. Also, there are claims that have been asserted relating to actions that have occurred in the past and it is our position that if a settlement is to be achieved these claims and any and all other claims need to be forever barred. The amendments proposed also include provisions for the parties to certify that the conditions have been met and all matters will not be subject to litigation in the future.

We therefore urge the dismissal of several cases of pending litigation with prejudice that should be an integral part of a complete and satisfactory settlement.

The following amendments are recommended:

SEC. 601. CLAIMS SETTLEMENT.

(a) This act shall not take effect until the following actions and claims are dismissed with prejudice and the following motions are withdrawn with prejudice:

(1) Pyramid Lake Paiute Tribe v. California, civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California;

(2) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Pyramid Tribe's proposed amended complaint;

(3) Pyramid Lake Paiute Tribe v. Lujan, Civil S-87-1281-LKK, United States District Court, Eastern District of California;

(4) all claims presented in Pyramid Lake Paiute Indian Tribe v. Department of the Navy, Civil No. R-86-155-BRT in the United States District Court for the District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit;

(5) all pending motions filed by the Pyramid Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission;

(6) Pyramid Lake Paiute Tribe of Indians v. Lujan, Civil R-85-197-BRT, United States District Court, District of Nevada;

(7) United States of America v. Alpine Land and Reservoir Co., etc. al., Ninth Circuit Nos. 88-2539, 88-2542, District Court No. D-0185-BRT;

(8) Pyramid Lake Tribe of Indians v. Hodel, et. al., Ninth Circuit Nos. 88-15116, 88-15117, District Court No. CV-85-0197-BRT;

(9) United States of America v. Alpine Land and Reservoir Co., et. al., Ninth Circuit Nos. 87-1746, 87-1747, District Court No. CV-D-184-BRT;

(10) Pyramid Lake Tribe of Indians v. Hodel, et. al., Ninth Circuit No. 86-1915, District Court No. CV-R-85-197-BRT; and

(b) This Act shall not take effect until the Secretary, California, Nevada, the Pyramid Tribe, Sierra Pacific Power Company, the Fallon Tribe, the Truckee-Carson Irrigation District have entered into an agreement which:

(1) certifies that all matters required to be settled by this Act and its associated agreements have been settled and that all preconditions to such settlement have been satisfied;

(2) insures that such matters will not be subject to litigation subsequent to the effective date of this Act; and

(3) sets forth waivers of sovereign immunity by the Pyramid Tribe and the Fallon Tribe with respect to actions brought to enforce their obligations under the agreement required by this section, this Act, and all associated agreements.

(c) The Business Council of the Fallon Tribe and the Secretary shall negotiate diligently: (1) to establish a program for full and prompt implementation of the provisions of Public Law 95-337 and/or alternatives thereto that are acceptable to the Fallon Tribe; and (2) to settle any outstanding claims arising from breaches of the 1906 Agreement between the Fallon Tribe and the United States, Public Law 95-337, and the Federal trust responsibility to the Fallon Tribe. To enable the Fallon Tribe to fully protect its interests in such negotiations, the Secretary shall provide adequate funding for technical and legal assistance under his existing authorities and programs. Neither the provisions of this Act nor the occurrence of negotiations under this section shall: release or modify any obligations or liabilities of the United States under the 1906 Agreement, Public Law 95-337, or the Federal trust responsibility; or prejudice, modify, or otherwise affect any claim to water rights appurtenant to lands within the Fallon Indian Reservation or the priority, nature or extent of any such rights.

SEC. 602. GENERAL PROVISIONS.

We have endeavored to include within this section some general language relative to savings clauses and hold harmless provisions which take into account the additional suggested parties in the foregoing sections of the bill.

The original section 602(b) provided certain resources to the Pyramid Tribe which have not been properly resolved. For example, the bed and banks of the river and lake have not been addressed by the Nevada legislature. Therefore, we did not include that paragraph in our provisions. Another example is Prosser Creek Reservoir. Prosser Creek Reservoir has been licensed to the United States for exchange with flows from Lake Tahoe and for maintenance of river flows which benefits all users on the Truckee River. Prosser Creek Reservoir yield therefore, should not be changed without agreement of the beneficiaries and in accordance with state law and procedures.

The suggested changes for this section are:

SEC. 602.

(a) All of the trust land within the Pyramid Lake Indian Reservation shall be permanently held by the United States in Trust for the sole use and benefit of the Tribe subject to any existing rights of use on or ownership in such lands held by or for the benefit of others.

(b) Nothing in this Act shall limit or diminish the Federal Government's trust responsibility to the Pyramid Tribe or the Fallon Tribe.

(c) The United States confirms and ratifies certain waivers by the Pyramid Tribe of the right to object to the implementation of the water supply measures described in sections 3 and 21 of the Preliminary Settlement Agreement and any waivers of sovereign immunity given by the Pyramid Tribe and the Fallon Tribe pursuant to section 601(b)(3).

(d) The Secretary, the Pyramid Tribe, the State of California and the State of Nevada shall negotiate an agreement determining rights to store water in Stampede Reservoir.

(e) No acquisition of water rights or water storage rights by or for the benefit of the Pyramid Tribe pursuant to sections 201 or 602(d), or any agreement made pursuant thereto, shall, in whole or in part, form the basis for any claim that: (1) the amount or timing of diversions from the Truckee River at Derby Dam to serve other water rights water should be reduced or altered; or (2) water rights appurtenant to lands within the Fallon Indian Reservation or the Newlands Project should not be transferred.

SEC. 603. EFFECTIVE DATE.

Naturally, with the inclusion of additional parties to the agreement, as well as other changes which we feel are necessary to achieve fair and equitable piece of legislation, certain changes must be incorporated to conform to our suggested amendments.

The following amendment is recommended:

SEC. 603.

In addition to other conditions on the effectiveness of this Act set forth in this Act, the provisions of titles II and V, and sections 401 and 602 shall not take effect until the Preliminary Settlement Agreement, the Operating Agreement, and the agreement required by section 601(c) have been approved by all necessary parties and any court approval required under section 201(a)(2) has been given, and the funds authorized under sections 202, 301(e), 302(b), 401(d), 501(b), 502(b), and 601(c) have been appropriated.

APPENDIX B

POTENTIAL AD VALOREM BURDEN ASSUMED BY REMAINING PROPERTY PROPERTY OWNERS OVER 50 YEAR PERIOD BY REDUCTION IN PROPERT, VALUE OF $16,000,000

YEAR	ANNUAL REVENUES LOST $	ALLOWED INCREASES $	ANNUAL BURDEN ASSUMED $
1	110280	0	110280
2	110280	6617	116897
3	116897	7014	123911
4	123911	7435	131345
5	131345	7881	139226
6	139226	8354	147580
7	147580	8855	156434
8	156434	9386	165820
9	165820	9949	175770
10	175770	10546	186316
11	186316	11179	197495
12	197495	11850	209344
13	209344	12561	221905
14	221905	13314	235219
15	235219	14113	249332
16	249332	14960	264292
17	264292	15858	280150
18	280150	16809	296959
19	296959	17818	314777
20	314777	18887	333663
21	333663	20020	353683
22	353683	21221	374904
23	374904	22494	397398
24	397398	23844	421242
25	421242	25275	446517
26	446517	26791	473308
27	473308	28398	501706
28	501706	30102	531808
29	531808	31908	563717
30	563717	33823	597540
31	597540	35852	633392
32	633392	38004	671396
33	671396	40284	711679
34	711679	42701	754380
35	754380	45263	799643
36	799643	47979	847622
37	847622	50857	898479
38	898479	53909	952388
39	952388	57143	1009531
40	1009531	60572	1070103
41	1070103	64206	1134309
42	1134309	68059	1202368
43	1202368	72142	1274510
44	1274510	76471	1350980
45	1350980	81059	1432039
46	1432039	85922	1517961
47	1517961	91078	1609039
48	1609039	96542	1705581
49	1705581	102335	1807916
50	1807916	108475	1916391
		TOTAL	32018244

NOTE: Allowed increases limited to 106% of revenue allowable from taxes ad valorem for the preceding year per NRS 354.59811.

Revenues calculated as follows:
$16,000,000 (value) X 0.35 = $5,600,000 (assessed value X $1.9693(tax rate)/$100(assessed value) = $110,028

Senator BRADLEY. Thank you, Mr. Schank.

Speaker Dini.

STATEMENT OF HON. JOSEPH E. DINI, JR., SPEAKER, NEVADA STATE ASSEMBLY

Mr. DINI. Thank you, Mr. Chairman. I am Joe Dini, Speaker of the Nevada Assembly. As Speaker of the Assembly, I find myself with the rather unique responsibility of serving the interests of the State of Nevada as a whole, and also representing my own local constituents. My district includes all of Lake Lahontan, a large portion of farms in the southern part of Churchill County, and the Fernley area and Lyon County, which has great concerns.

I certainly want to express my support for the efforts that have been invested in Senate Bill 1554. I think it is really significant to all of northern Nevada. We have got to get this resolved. It is 80 years of controversy, litigation and stagnation.

As a representative of the special group of local constituents, however, I must express concern with a couple of potential ramifications of this legislation. Lahontan reservoir was constructed as the mainstay of the Newlands project, the initial Federal reclamation project in the nation. The Federal investment at that point and through the years has been substantial. Considerable State investment has also been made in Lahontan facilities. In recreational development of the reservoir alone, the State of Nevada has invested approximately $6 million.

During the 1970s through the 1980s, before the operating criteria for the Truckee River and the droughts lowered the pool, Lahontan state parks supported over half a million visitors a year, making it the second most heavily used park in the state system, only behind Lake Tahoe. On any Memorial Day or Fourth of July it becomes the fourth largest city in the State of Nevada, with between 50,000 and 100,000 people. Recent reductions in the pool level have significantly impaired this major recreational resource.

Although we are told that implementation of the provisions of Senate Bill 1554 would enhance the reservoirs recreational activities, I am concerned that no specific guarantees are contained in that legislation. A management system which would store water purchased by the Federal and State governments in Lahontan for release to the Stillwater Wildlife Refuge in the fall of the year has been discussed. I would recommend, however, that language be included in the bill to ensure the preservation and enhancement of the recreational investment in Lake Lahontan.

I am also concerned that the groundwater reservoirs which are dependent upon for domestic water supplies in Churchill County and the town of Fernley are not adequately protected through the legislation. Scientific studies conducted by the U.S.G.S. confirm that irrigation activities and management of the canal system directly affect the shallow aquifer in Churchill County.

Approximately 6,000 domestic wells depend on this aquifer as their only viable source of drinking water. This is something peculiar to the Lahontan Valley, in that the lower waters are brackish and have a quality problem, so they can't use it. So actually these wells go from 25 feet to 100 feet along these canals, and they use that for drinking water in their homes. Likewise, surface application of irrigation water is the predominant recharge for the aquifer, supplying domestic water to the town of Fernley.

Again, according to the United States Geological Survey, natural recharge to this aquifer is approximately 600 acre-feet per year, while recharge from the application of surface irrigation totals at least 23,000 acre-feet per year. The disparity in these figures illustrates the community's dependence on irrigation to support its domestic drinking water supply.

It is also evident that a reduction in these sources of supply will have an immediate negative effect on the quality of the waters in the two aquifers. Concentration of pollutants is the natural effect when the volume of water is reduced. With the probable ramifications of the amendments to the Federal Safe Drinking Water Act staring our rural communities in the face, adding the prospects of increased groundwater pollution is something not tolerable.

I have two recommendations which address these issues. First, guarantees should be included in the bill to ensure mitigation and compensation for any degradation of groundwater aquifers resulting from the transfer of water rights from irrigation or changes in the operation of the river system. Second, the bill should specifically state that any transfer of water rights, whether it is point of diversion or point of use, is controlled by State law. We believe that State law has primacy in our state. Regardless of the ownership of the water right, private, State or Federal, the bill should specify that any such action is subject to the approval or denial of the State Engineer as provided by State law.

We feel this bill is significant. On the other hand, we feel that some modifications would be appropriate to help these people in the specific areas that I have mentioned.

Also, we have some people here from Fernley that would like to have you recognize them, Mr. Chairman. They came a long way just to see these hearings, and wanted me to carry their word for them, but they have come all the way on their own to be here. Would you please stand, the people from Fernley.

Senator BRADLEY. For the record, what are your names?

Mr. KELSO. I am Bob Kelso, Fernley Town Board Secretary.

Mr. LOVE. Gene Love, Fernley Town Board Chairman.

Ms. HAROLD. Rebecca Harold, Fernley Town Attorney.

Mr. KRAMER. Kurt Kramer, Fernley Utilities Manager.

Senator BRADLEY. Welcome to the subcommittee.

Mr. DINI. Mr. Chairman, previously the water study was mentioned. We have a statewide water study going on that I am chairman of. We break it down into three segments, the rural, Washoe County, and Clark County, to take into specific problems that they have in those areas. Nevada is certainly a water short state, and the specific areas in western Nevada need to see the compact pass. We were here in 1985 to speak for the compact, and it didn't pass at that time. I worked on that since 1967 in the legislature, when Reagan and Laxalt were governors, and we still haven't seen that.

But the language that is being put in this bill is certainly a step in the right direction to help resolve that, because that distribution means a lot to the State of Nevada, and the study is going to go forward in an effort to help mitigate some of the problems that we have in our existing water law. We hope to make some substantial changes perhaps to see that the State Engineer has the tools so that he can adjudicate properly.

[The prepared statement of Mr. Dini follows:]

JOSEPH E. DINI, JR.
Assemblyman
District No. 38

104 N. Mountain View
Yerington, Nevada 89447
Office 463-2868
Home 463-2669

SPEAKER OF THE ASSEMBLY

Nevada Legislature

SIXTY-FIFTH SESSION

STATEMENT CONCERNING S. 1554

FEBRUARY 1990

JOSEPH E. DINI, JR.

I AM JOSEPH E. DINI, JR., SPEAKER OF THE NEVADA ASSEMBLY. AS SPEAKER OF THE ASSEMBLY, I FIND MYSELF WITH THE SOMEWHAT UNIQUE RESPONSIBILITY OF SERVING THE INTERESTS OF THE STATE AS A WHOLE, AND YET ALSO REPRESENTING MY OWN LOCAL CONSTITUENCY. MY COMMENTS AND RECOMMENDATIONS TO YOU TODAY HAVE THEIR ORIGIN IN THIS NEED TO SIMULTANEOUSLY BE A STATESMAN AND A LOCAL REPRESENTATIVE.

LOOKING AT THE BROAD PICTURE, I WOULD EXPRESS MY SUPPORT FOR THE EFFORTS THAT HAVE BEEN INVESTED IN THE DEVELOPMENT OF S. 1554. THE MEASURE IS OF EXTREME SIGNIFICANCE TO ALL OF NORTHERN NEVADA IN THAT IT PROVIDES THE VEHICLE TO RESOLVE 80 YEARS OF CONTROVERSY, LITIGATION AND STAGNATION.

AS THE REPRESENTATIVE OF A SPECIAL GROUP OF LOCAL CONSTITUENTS, HOWEVER, I MUST EXPRESS CONCERN WITH A COUPLE OF POTENTIAL RAMIFICATIONS OF THE PROPOSED LEGISLATION. I WILL BE VERY BRIEF AND PROVIDE SPECIFIC RECOMMENDATIONS.

LAHONTAN RESERVOIR

LAHONTAN RESERVOIR WAS CONSTRUCTED AS THE MAINSTAY OF THE NEWLANDS PROJECT--THE INITIAL FEDERAL RECLAMATION PROJECT IN THE NATION. THE FEDERAL INVESTMENT AT THAT POINT AND THROUGH THE YEARS HAS BEEN SUBSTANTIAL. A CONSIDERABLE STATE INVESTMENT HAS ALSO BEEN MADE IN THE LAHONTAN FACILITIES.

IN RECREATIONAL DEVELOPMENT OF THE RESERVOIR ALONE, THE STATE OF NEVADA HAS INVESTED APPROXIMATELY $6 MILLION. DURING THE 1970'S THROUGH THE MID-1980'S BEFORE THE OPERATING CRITERIA FOR THE TRUCKEE RIVER AND THE DROUGHTS LOWERED THE POOL, THE LAHONTAN STATE PARK SUPPORTED OVER HALF A MILLION VISITORS PER YEAR, MAKING IT THE SECOND MOST HEAVILY USED PARK IN THE STATE SYSTEM, ONLY BEHIND LAKE TAHOE. ON A MEMORIAL DAY OR FOURTH OF JULY HOLIDAY, THE PARK BECAME HOME TO SOMEWHERE BETWEEN 50,000 AND 100,000 VISITORS.

RECENT REDUCTIONS IN THE POOL LEVEL HAVE SIGNIFICANTLY IMPAIRED THIS MAJOR RECREATIONAL RESOURCE. ALTHOUGH WE ARE TOLD THAT IMPLEMENTATION OF THE PROVISIONS OF S. 1554 WOULD ENHANCE THE RESERVOIR'S RECREATIONAL ACTIVITIES, I AM CONCERNED THAT NO SPECIFIC GUARANTEES ARE CONTAINED IN THE LEGISLATION. A MANAGEMENT SYSTEM WHICH WOULD STORE WATER PURCHASED BY THE FEDERAL AND STATE GOVERNMENTS IN LAHONTAN FOR RELEASE TO THE

STILLWATER WILDLIFE REFUGE IN THE FALL OF THE YEAR HAS BEEN DISCUSSED. I WOULD RECOMMEND, HOWEVER, THAT LANGUAGE BE INCLUDED IN THE BILL TO ENSURE THE PRESERVATION AND ENHANCEMENT OF THE RECREATIONAL INVESTMENT IN LAHONTAN RESERVOIR.

IMPACTS ON GROUND WATER IN CHURCHILL COUNTY AND FERNLEY

I AM ALSO CONCERNED THAT THE GROUND WATER RESERVOIRS WHICH ARE DEPENDED UPON FOR DOMESTIC WATER SUPPLIES IN CHURCHILL COUNTY AND THE TOWN OF FERNLEY ARE NOT ADEQUATELY PROTECTED THROUGH THE LEGISLATION.

SCIENTIFIC STUDIES CONDUCTED BY THE UNITED STATES GEOLOGICAL SURVEY CONFIRM THAT IRRIGATION ACTIVITIES AND MANAGEMENT OF THE CANAL SYSTEM DIRECTLY AFFECT THE SHALLOW AQUIFER IN CHURCHILL COUNTY. APPROXIMATELY 6,000 DOMESTIC WELLS DEPEND ON THIS AQUIFER AS THEIR ONLY VIABLE SOURCE OF DRINKING WATER.

LIKEWISE, SURFACE APPLICATION OF IRRIGATION WATER IS THE PREDOMINANT RECHARGE FOR THE AQUIFER SUPPLYING DOMESTIC WATER TO THE TOWN OF FERNLEY. AGAIN ACCORDING TO THE UNITED STATES GEOLOGICAL SURVEY, NATURAL RECHARGE TO THIS AQUIFER IS APPROXIMATELY 600 ACRE FEET PER YEAR, WHILE RECHARGE FROM THE APPLICATION OF SURFACE IRRIGATION TOTALS AT LEAST 23,000 ACRE FEET PER YEAR. THE DISPARITY IN THESE FIGURES ILLUSTRATES THE

COMMUNITY'S DEPENDENCE ON IRRIGATION TO SUPPORT ITS DOMESTIC DRINKING WATER SUPPLY.

IT IS ALSO EVIDENT THAT A REDUCTION IN THESE SOURCES OF SUPPLY WILL HAVE AN IMMEDIATE NEGATIVE EFFECT ON THE QUALITY OF THE WATERS IN THE TWO AQUIFERS. CONCENTRATION OF POLLUTANTS IS A NATURAL EFFECT WHEN THE VOLUME OF WATER IS REDUCED. WITH THE PROBABLE RAMIFICATIONS OF THE AMENDMENTS TO THE FEDERAL SAFE DRINKING WATER ACT STARING OUR RURAL COMMUNITIES IN THE FACE, ADDING THE PROSPECTS OF INCREASED GROUND WATER POLLUTION IS SIMPLY NOT TOLERABLE.

I HAVE TWO RECOMMENDATIONS WHICH ADDRESS THESE ISSUES. FIRST, GUARANTEES SHOULD BE INCLUDED IN THE BILL TO ENSURE MITIGATION AND COMPENSATION FOR ANY DEGRADATION OF GROUND WATER AQUIFERS RESULTING FROM THE TRANSFER OF WATER RIGHTS FROM IRRIGATION OR CHANGES IN THE OPERATION OF THE RIVER SYSTEM.

SECOND, THE BILL SHOULD SPECIFICALLY STATE THAT ANY TRANSFER OF WATER RIGHTS (WHETHER IT IS POINT-OF-DIVERSION OR POINT-OF-USE) IS CONTROLLED BY STATE LAW. REGARDLESS OF THE OWNERSHIP OF THE WATER RIGHT - PRIVATE, STATE OR FEDERAL - THE BILL SHOULD SPECIFY THAT ANY SUCH ACTION IS SUBJECT TO THE APPROVAL OR DENIAL OF THE STATE ENGINEER AS PROVIDED BY STATE LAW.

IN CLOSING, I WOULD ONLY EMPHASIZE THE SIGNIFICANCE OF S. 1554 TO NORTHERN NEVADA GENERALLY AND TO MY CONSTITUENTS SPECIFICALLY. IT HOLDS THE KEY TO SOLVING THE CONTROVERSIES, LITIGATION AND STAGNATION WHICH HAVE BEEN ACCUMULATING FOR DECADES. IT ALSO, HOWEVER, COULD HAVE DEVASTATING RAMIFICATIONS ON MY RURAL CONSTITUENTS IF THE APPROPRIATE SAFEGUARDS AND GUARANTEES ARE NOT INCLUDED.

IN ADDITION TO THE MANY OFFICIAL SPEAKERS HERE TO ADDRESS YOU TODAY, I WOULD ASK YOU NOT TO OVERLOOK THE FACT THAT FOUR CITIZENS OF THE TOWN OF FERNLEY - POPULATION 7,500 IN RURAL NEVADA - ARE SUFFICIENTLY CONCERNED ABOUT THE FUTURE OF THEIR COMMUNITY THAT THEY HAVE COME HERE SIMPLY TO SUPPORT THE COMMENTS THAT ARE BEING MADE. THE TOWN DOES NOT HAVE A LARGE BUDGET, AND THESE PEOPLE ARE NOT ON THE PUBLIC PAYROLL. THEY ARE TAKING TIME FROM THEIR REGULAR EMPLOYMENT SIMPLY TO COME HERE AND IMPRESS UPON YOU THE SIGNIFICANCE OF THEIR CONCERNS.

I APPRECIATE THE OPPORTUNITY TO SPEAK TO YOU AND WOULD REQUEST YOUR THOUGHTFUL CONSIDERATION OF MY THREE RECOMMENDATIONS.

THANK YOU.

W90-74,20

Senator **BRADLEY**. Thank you very much, Mr. Dini.

Mr. deBraga, welcome.

STATEMENT OF TED DEBRAGA, PRESIDENT, TRUCKEE-CARSON IRRIGATION DISTRICT, ACCOMPANIED BY LYMAN McCONNELL, PROJECT MANAGER

Mr. **DEBRAGA**. Thank you, Senator and staff. I want to thank you for the opportunity to testify on S. 1554 and answer any questions that you may have after we give our testimony. There is the indication today that there are numerous questions and answers in regard to the irrigation district and the issues that have been involved.

My name is Ted deBraga. I am currently the President and Chairman of the Board of the Truckee-Carson Irrigation District. I am a water user, along with approximately 2,500 other water users on the project. My grandparents came to the project in 1916 in response to the government's notice of enticement, which is here, encouraging them to come to the project and take up land, develop it and farm it.

Senator **BRADLEY**. Is that the original?

Mr. **DEBRAGA**. It is a copy of it. Your staff, Mr. Jensen, has a copy of that. It was to be sold in 40 and 80 acre parcels. They did settle on a 40 acre parcel. That land today is still being farmed by the fourth generation of the deBraga family.

S. 1554 is intended to resolve 80 years of litigation on the Carson and the Truckee Rivers. The Truckee-Carson Irrigation District wants these problems resolved also. The district has spent $3.12 million on litigation and associated costs, which is money that very well could have been spent for improvements on the district, but it went to pay lawyers. And we have won some cases, we have lost some, and the only ones that come out ahead are maybe the lawyers. But I like lawyers too.

The litigation and turmoil that goes along with litigation has caused a real financial and emotional burden on the water users of the project, and the residents of Churchill and Lyon County who live in the area, due to the lifestyle that the rural atmosphere creates. They enjoy the wetlands, which the irrigation district supports very strongly. We have for years. We had it in a bill in 1985 that was never able to be achieved. But the district supports the wetlands and, as indicated in previous testimony here today, we have agreed to water purchases on the project to go to the wetlands and support that issue.

We have the endangered bald eagle that is on the project, along with numerous shorebirds, ducks, geese and other animals that make the wetlands their home for food and rest in their travels.

The Truckee-Carson Irrigation District supports the concept of S. 1554. However, we feel that the bill needs certain language and provisions to accomplish these goals. We have submitted language changes and amendments to the bill for your review and consideration which we feel will help carry out the intent of the bill.

At this time I would like to have Lyman McConnell, our Project Engineer, briefly explain why we feel these changes and amendments are necessary to achieve that goal.

Mr. McConnell. Thank you very much, Senator. I appreciate the opportunity to be here to give you our viewpoints of the settlement.

Senator Bradley. This is Mr. McConnell?

STATEMENT OF LYMAN McCONNELL, PROJECT MANAGER, TRUCKEE-CARSON IRRIGATION DISTRICT

Mr. McConnell. Yes, Sir. My name is Lyman McConnell. I am the Project Manager of the Truckee-Carson Irrigation District. The district does support the objectives of Senator Reid's bill, but at the current time we don't think that the bill meets those objectives. One of those objectives is the end to the 80 years of litigation.

The litigation that is involved on the Truckee River has primarily been between the Pyramid Lake Tribe and the Truckee-Carson Irrigation District, or the Newlands project. There are currently five outstanding lawsuits on those issues at the present time, with three that are kind of in the wings. Those are not addressed in this bill. We would support a full settlement of the matters and a complete resolution of all the litigation, if possible.

We tried, we weren't successful, but we think part of the reasons that we weren't successful is we didn't have the proper incentives available to us. For example, the district is similar to a utility company. We have 73,000 acres of water rights, that if they all require delivery of water at our current efficiencies would take in the neighborhood of 450,000 acre-feet. The tribes desires are to limit the project to 300,000 acre-feet, so there is a wide spread in the available water supply.

In that regard, we were told at the beginning of our negotiations there wasn't going to be any Federal monies involved in improvements and efficiencies. And we were told also that there wasn't going to be any change in the OCAP, operating criteria that is currently before the court, upon our objections and others objections.

Our main concern with the operating criteria is that the Federal Government has reduced the storage capacity for target deliveries from the Truckee River to two thirds of its capacity. That creates artificial shortages for the water users in years when they wouldn't otherwise be subjected to those shortages.

The project is one of the very first projects that was ever enacted and constructed. And in that regard is 75 to 80 years old. It needs improvements and it needs a lot of rehabilitation. The project farmers aren't able to pay for a lot of those improvements, and so economic help is needed in order to increase the efficiencies. The OCAP goal is to improve the efficiencies to 68 percent. This year we were approximately 62 percent. We have made substantial operational changes and increased the efficiency substantially.

Senator Bradley. That is of Truckee or Carson division, or both?

Mr. McConnell. That is the overall, combined efficiency both on the Truckee division and the Carson division.

Senator Bradley. How would they split?

Mr. McConnell. I can't really tell you. I can get that information for you if you would like.

Senator Bradley. That is an average?

Mr. McCONNELL. Yes, that is an average. The way they figure the OCAP efficiencies is they take the diversions off the Truckee River, they take the releases from Lahontan reservoir, and subtract from that the potential losses. They subtract from it the deliveries to the land and come up with an overall efficiency.

Senator BRADLEY. How much would a one percent in efficiency save?

Mr. McCONNELL. About 5,000 acre-feet.

Senator BRADLEY. 5,000?

Mr. McCONNELL. I think so.

Senator BRADLEY. That's a lot, although I had a bigger number than that.

Mr. McCONNELL. Okay, at our current efficiencies we delivered about 300, we used about 340,000 acre-feet and delivered about 215,000 acre-feet. So you divide one into the other and that is where you come up with the efficiency.

Another area of concern in the bill is the Operating Agreement. We are currently part of the 1935 Truckee River Agreement, which was the authority for operating on the Truckee River. And the new legislation presumes to establish a new operating criteria and a new operating regime, without leaving—leaving us, as one of the major parties in the use of that water, out of that operating agreement discussions.

And the reason why we feel that it is necessary for us to be a part of that is that we have been told that the bill is not going to harm any of our interests, and we want to be part of that process to ensure that that doesn't occur. Mainly because nobody knows the business as well as we know our business. Other people may think that that is not interfering, or not impacting on our use, but it may very well.

And if we are part of the process and we have an available opportunity to discuss those things and get them worked out at the time rather than after the agreement is complete and have to go to the additional expense of hiring experts to fully review that agreement, tell us whether or not there are any impacts, and then for us to go into court and spend additional money there to try to get the thing resolved through litigation, when the purpose of the bill is to try to resolve some of the litigation.

Another area is in the Stillwater purchases. This came up in some questioning today, because I recall making a note of it. As Chairman deBraga of our board indicated, the district is in support of the purchases for the wetlands. But one concern we have had is that we heard a rumor that the purchases program would be purchase for the wetlands, and in exchange for these sewage effluent from the Reno and Sparks, as that sewage effluent would go to the wetlands. And so we have addressed that area by making specific amendments and clarifications to ensure that that intent of purchase for the wetlands is carried forth.

I might take an opportunity here to address maybe perhaps one question that came up, and that was in regard to State water law violations. As we see the bill, there are some significant areas where we feel that there are impacts or preemptions or impairment to State water law. One of those is in an allocation, a Federal allocation on the river system.

It is our understanding that the Pyramid Tribe would like to have a Federal allocation on the Truckee River system. By doing that, that leaves them with perhaps preemption arguments and other arguments adverse to State law water rights, that they can somehow then get a preference. And so we feel very concerned that that would interfere with State water law and its administration.

Another area is in the transfer of Fallon Naval Air Station water. I heard your comments that Senator Reid has offered amendments for that to be in compliance with State water law, and that may very well address that particular concern.

Another area is in the allocation of water from the Stampede and Prosser reservoirs. Currently Stampede reservoir is dedicated for the sole use of the cui-ui and endangered species. Prosser reservoir currently is operated by the Bureau under a license, and the beneficial use of that license is to maintain and supplement flows in the Truckee River, which are the benefit of all users on the river system. If those two reservoirs are dedicated for other uses outside of State water law, then the individuals that have some benefits from that particular water use don't have an opportunity to express their concerns and have a full hearing on all the matters. And we think in that regard——

Senator **Bradley**. Do you mean the cui-ui? You don't have an opportunity to hear the cui-ui?

Mr. **McConnell**. No, what I am referring to is the Prosser reservoir primarily, where it supplements the flow of the Truckee River. And if that was dedicated or set aside in Federal legislation then we wouldn't have the opportunity to express where that harms our water right, in the sense of the water available on the system. And we feel that that is sort of an infringement on State law.

The one area that we are not sure of is the Preliminary Agreement. If the Federal legislation endorses the Preliminary Agreement and gives some kind of sanctions to that Preliminary Agreement, that could be used in court in arguments that they somehow now preempted State law, and that the Federal courts had mandated certain obligations to occur that would be adverse to the State water law system. And so that is what we are concerned about.

We would like to see those matters handled under State law because we are familiar and comfortable with State water law, and have an opportunity to appear and participate. I realize that time is running out, so I will just defer any further comment. I hope that you will consider our comments in the record.

Thank you very much.

[The prepared statement of Mr. deBraga and Mr. McConnell follows:]

TRUCKEE—CARSON IRRIGATION DISTRICT

NEWLANDS PROJECT
P.O. BOX 1356
FALLON, NEVADA 89406
TELEPHONE (702) 423-2141

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TESTIMONY ON S1554

By

Ted deBraga, President, Board of Directors, TCID
Lyman McConnell, Project Manager, TCID

Senator Bradley, Staff and others - I want to thank you for the opportunity to testify on S1554 and answer any questions that you may have.

My name is Ted deBraga. I am currently the President and Chairman of the Board of the Truckee-Carson Irrigation District.

I am a water user along with approximately 2500 other water users on the Newlands Project.

My grandparents moved to the Newlands Project in 1926 in response to the government's notices encouraging folks to reclaim the land and make it productive. Today that same land is still owned and being farmed by the 4th generation of the deBraga family.

S1554 is intended to resolve 80 years of conflict and litigation on the Carson and Truckee River systems. The Truckee-Carson Irrigation District wants these issues resolved also. The District has spent $3.121 million on litigation and associated costs. The litigation and the turmoil that goes along with the litigation has created a real financial and emotional burden on the project water users and other residents of Churchill and Lyon Counties. These folks enjoy the rural lifestyle; recreational uses associated with agriculture; the wetlands nearby and the wildlife associated with the wetlands in the Lahontan Valley, for example, the endangered Bald eagle which frequents the area; the geese and ducks; the shorebirds and other birds, fish and animals that make their home within the Project or utilize the wetlands for food and rest in their travels.

The Truckee-Carson Irrigation District supports the concept of S1554, however, we feel that the bill needs certain language and provisions amended to accomplish these goals.

We have submitted language changes and amendments to S1554 for your review and consideration which we feel will help carry out the intent of the Bill.

Lyman McConnell, Project Manager for the Truckee-Carson Irrigation District, will briefly explain why we feel these changes are appropriate and necessary. Thank you.

Before the turn of the century, there were approximately 21,000 acres of irrigated lands in the Churchill County/Fallon area. Also, the Fallon Paiute-Shoshone Tribes had about 31,000 acres set aside as allotments to the Tribal members. As the government's policies changed, inactment of the Reclamation Act in 1902 began the movement of people West to settle and reclaim the arid lands. In opening up these federal lands for settlement, the Newlands Project became one of the first projects considered. Senator Newlands from the State of Nevada was instrumental in drafting and passage of the Reclamation Act. As a result, the Newlands Project became one of the first projects authorized under the Reclamation Act of 1902 and the construction of Derby Dam on the Truckee River to divert water into the Fallon/Fernley area was the first construction project that the Bureau of Reclamation authorized. The Government in encouraging people to come West and settle, provided incentives. Those incentives were fixed at the time an individual applied for entry to the Federal lands and completed the necessary improvements to become the owner of the land and water from the U. S. Government. One point must be remembered. The lands within the Project were desert lands even though there were 21,000 acres irrigated in the Fallon/Churchill County area prior to the enactment of the Reclamation Act. The lands that were opened up for homestead had to be reclaimed and it took a lot of hard work and toil by the forefathers of the people that live there today to make it a very productive agricultural area. When the government issued the water right applications and certificates for the Project, they, in essence, sold to the homesteaders a water right that became appurtenant to their land under State law.

The provisions of the Reclamation Act required a water users group to be organized to assume the operation and maintenance of the project. In 1918. the Truckee-Carson Irrigation District (TCID) was formed. In 1926, the TCID contracted with the federal government for the operation and maintenance of the Newlands Project and since January 1, 1927, has been the operator of the Newlands Project and has paid all of the operation and maintenance charges attendant with the operation and maintenance of the District.

The project designers intended to irrigate over 200,000 acres but as they began to develop the water supply and the storage facilities. it became apparent that there was not enough water to supply the acreage intended. The government filed for water rights on both the Carson and Truckee River for the Project, which culminated in the Orr Ditch Decree in 1944 on the Truckee River, and prior thereto (1935), an agreement by the major water users on the system, Sierra Pacific Power Company, Truckee-Carson Irrigation District, the Washoe County Water Conservation District and the United States, was executed and became known as the Truckee River Agreement. That agreement provided for the operation and coordination of the Truckee River and releases from the existing reservoirs. The Alpine Decree on the Carson River became final in 1983 after all appeals were exhausted. In 1951, the Pyramid Lake Indian Tribe (PLIT) sued the United States for loss of water to Pyramid Lake and eventually settled with the United States in 1976 for $8 million. The Tribe also agreed not to sue the United States for any loss of water in the future.

In the meantime, there was a move to reduce the water usage on the Project. In 1968, the Project water users and the United States entered into an agreement referred to as the Nine Point Program, wherein project water users agreed to limit the total water use on the project to 406,000 acre-feet; agreed to give up generation of power through the hydro plant at Lahontan Dam during the winter months and only generate power with releases for irrigation purposes; to give up 64 acres of land in Lake Tahoe to the Forest Service, and to limit their water right acres on the Project to approximately 80,000 acres. The United States in return was going to perform approximately $3 million in rehabilitation work on the major dams and major canal structures on the Project without reimbursement. In addition, the United States agreed to fund an additional $1.5 million for R & B that would be reimbursable by the Project users on a 50% cost sharing basis. That agreement was never consummated with Congress for one reason or another. However, the project water users have now lost the benefits they were going to exchange with the U. S.

Prior thereto, the releases of water for hydrogeneration supported a vast wetlands in the Stillwater Marsh area and in 1948 the Truckee-Carson Irrigation District entered into an agreement with the Nevada Department of Wildlife (NDOW) and the U. S. Fish & Wildlife Service for the establishment of a wildlife and refuge area in Stillwater. The agreement is referred to as the Tripartite Agreement. The agreement provided for the State of Nevada and the United States to cooperatively work with the TCID in the management of that area for wildlife and grazing purposes. Subsequent thereto, the TCID and NDOW formed an advisory group for the operation and management of the Carson Lake Pasture and Marsh area. Funds were provided by the Fleishmann foundation (over $1 million) and approved by the Secretary of Interior for improvements to benefit the Stillwater Wildlife area and the Carson Lake Marsh area.

In 1973, as a result of a lawsuit by the Pyramid Lake Indian Tribe against the United States in the District Court of the District of Columbia, Washington, D. C., an Order was issued based upon the Pyramid Lake Indian Tribe's operating criteria for the Newlands Project. The United State's testimony at that time was that the provisions within the 1926 contract were strictly for the purpose of providing rules and regulations on the operation and maintenance of the facilities on the Project and not with regard to water use since the Reclamation Act had specified (see Section 8 of the 1902 Act) that the use and distribution of water would be controlled and directed by State Water Law. The Department of Interior wanted to appeal the decision since they felt it was a very restrictive decision on the Project water use. It reduced the total use on the Project to 288,000 acre-feet, however, the decision stated that nothing in the court's ruling was to interfere with the Alpine or Orr Ditch Decrees. The Justice Department decided not to appeal that decision. At about the same time, the Pyramid Lake Tribe and the United States filed suit against all the water users in

Nevada on the Truckee River under the Orr Ditch Decree asking for a reserved water right with a priority date of 1859 for the Pyramid Lake Indian Reservation. That suit resulted in a decision by the United States Supreme Court in 1983 wherein the Court held that they would not reopen the Orr Ditch Decree because the U. S. had represented the Pyramid Lake Tribe in the water allocations and had obtained additional water for them. In addition the Court noted that the Pyramid Lake Tribe had already settled for $8 million for any loss of water they had suffered. In that decision the Court stated that the United States' interest in the water of the Newlands Project was that of a lienholder to insure that the operation and maintenance charges and original construction charges were paid. The Court further stated that the beneficial ownership of the water rights belonged to the individual land owners and water users within the Project.

After the United States Supreme Court case, the United States began issuing a series of operating criteria and procedures (OCAP) for the Newlands Project on an interim annual basis and finally presented in April 1988 to the Federal District Court in Reno, a final OCAP to operate the Project in the future. That matter is pending review by the Court. The OCAP litigation that was begun in Washington, D. C., was later transferred to the District Court of Nevada so all parties affected would have an opportunity to participate in matters involving operations within the Project. Subsequent to the transfer of that case to Nevada, the Truckee-Carson Irrigation District intervened as a party of interest; 3,000 water users have intervened separately; the Fallon Paiute Shoshone Tribes have intervened, and the State of Nevada has intervened all as parties of interest in the Operating Criteria and Procedures. The major concern of the operating criteria is the reduction of storage levels in Lahontan Reservoir. By the reduction of storage targets in Lahontan to two-thirds of its capacity, the United States Government has effectively reduced the water available to the Project water users in dry years and has effectively shortened the recreation season at Lahontan so that recreation ends in early to mid August.

The government has also sought reduction of water allocations on the Project of about 10,000 acre-feet through additional litigation on the establishment of water duties which have been set for years.

Over the years, the Project water users have improved through technology, the methods and manner in which they irrigate their land. They have lazer leveled their land and have concrete lined their laterals in an effort to improve efficiencies in the use of irrigation water. Where once there was a contour change in the landscape which at that time couldn't be changed, now there is no longer such a contour in the landscape because of the equipment available today to lazer level the water user's fields. The federal government has declared those uses on lands where land leveling and contour changes occurred to be invalid uses and has required many water right transfers to be submitted through the State Engineer of Nevada. Those water right transfers have been systematically protested by the Pyramid Lake Indian Tribe and are the subject of further ligitation. A recent 9th Circuit Court of Appeals decision has substantially upheld the validity of those water right transfers.

Prior to this turmoil and strain of trying to get more water for Pyramid Lake and thereby adversely impacting the very valuable resource of wildlife and wetlands in Stillwater and Lahontan Valley, the government was completing another storage reservoir on the system called Stampede Reservoir which was constructed for the purposes of M & I water for the Cities of Reno and Sparks as well as Sierra County in California, for supplemental irrigation water, and for fish & wildlife purposes. But, because of the endangered cui-ui at Pyramid Lake, which has been listed since 1966, Stampede Reservoir, with a capacity of 225,000 acre-feet, has been totally dedicated for the recovery of the cui-ui lake sucker. Sierra Pacific Power Company wanting an additional supply of water, which they anticipated would be available from Stampede Reservoir, sued the United States Government to contract for a supply of water from Stampede Reservoir for M & I for the Reno/Sparks area. The Court decided that the Federal Government was not required to enter into those contracts as long as the cui-ui remains on the endangered species list.

With the plethora of cases and lawsuits against the Newlands Project by the Pyramid Lake Indian Tribe and the failure of Sierra Pacific Power Company to acquire storage and a water supply from Stampede Reservoir, attempts have been made to settle the water issues in Northern Nevada through negotiation rather than litigation. An agreement was drafted and reached in 1985, submitted to Congress, but was eventually scuttled by the Pyramid Lake Tribe. Once Senator Reid was elected, he began a new series of negotiations in an attempt to try to solve the interstate allocations between Nevada and California; provide a drought supply for Reno and Sparks, and settle the "eighty years of water wars".

Rather than try to balance the supply of water between two important resources, Stillwater Wildlife area and Pyramid Lake, the decision was made to purchase water rights for the Stillwater wetlands. Negotiations began between Sierra Pacific Power Company, the Pyramid Lake Tribe, State of Nevada, State of California and the Truckee-Carson Irrigation District, and later the United States, in an attempt to find a suitable solution to the problem. As the issues were specific to certain parties, they eventually separated into small groups and negotiations went on between the specific parties for various different aspects of the settlement. The Truckee-Carson Irrigation District met with the Pyramid Lake Indian Tribe in attempts to try to solve the litigation over the use of water on the Project and the Operating Criteria and Procedures. So far those negotiations have been unsuccessful but the TCID is hopeful that a settlement can be reached and has asked Senator Reid to assist in continuing these settlement discussions. Senator Reid has committed to us to an overall settlement and has agreed to do what he can do to accomplish an agreement between TCID and PLIT.

At this time, I would like to clear the record on the rumors that have been spread about the Truckee Carson Irrigation District (TCID) walking out of the negotiations, nothing is further from the truth. At the very first meeting between the PLIT and TCID, the Justice Dept. attorney, who was handling the litigation against the District and who was aligned with the Pyramid Lake Indian Tribe in the litigation, attended and stated very emphatically that there wasn't going to be any federal monies spent on the Newlands Project for improvements to increase operating efficiencies (such improvements would ultimately benefit Pyramid Lake) and that there wasn't going to be any change in the Operating Criteria and Procedures (OCAP). This set the tone for the negotiations and discussions with the PLIT.

The TCID is a publicly owned and operated utility which is responsible for operation amd maintenance of the Newlands Project facilities. The customers of the TCID are water users who have received a water right under state law and own the right to use the water. The TCID is responsible for delivery of that water and ensuring an adequate supply. Similar to Sierra Pacific Power Company except TCID is publicly owned and not privately owned and TCID is non-profit rather than profit motivated. The TCID District includes 73,000(+) acres of water right which require service if called upon. At the current efficiency (61+%) - a good efficiency since the facilities were constructed by the U. S. 75 to 80 years ago - the TCID would require 450,000 acre-feet to deliver all water rights. The PLIT wants the TCID to limit its water use to 300,000 acre-feet, a 33% reduction. Then the U. S. attorney says there isn't going to be any federal monies for improvements.

Also, the U. S. has reduced the storage criteria for diversion of water from the Truckee River to 2/3 of the capacity of Lahontan Reservoir; a criteria which creates artificial shortages to the Newlands Project water users. Then the U. S. attorney says there isn't going to be any changes in the OCAP.

As you can see, those statements placed very restrictive parameters on the ability of the TCID and the PLIT to reach a settlement. Although there were offers made by the TCID to find ways to reduce the overall water requirements of the Project the PLIT and TCID could not reach agreement. Upon return to the larger group it was stated by the PLIT that nevertheless they wanted to continue their discussions with others. At that time, it was understood that should either party have further ideas for settlement, that the PLIT and TCID would get back together and try and resolve their differences. TCID continued to attend the larger group discussions with the hope that something might be developed that could create an opportunity for settlement. The TCID did not leave the discussions and have always wanted a settlement. At times, up to 15% of the TCID budget has been spent for direct litigation expenses and it doesn't look like it is going to get any less in the future unless the "water wars" can be resolved.

The TCID very much supports the objective of Senator Reid in trying to end the "eighty years of water wars". Senator Reid should be commended for his efforts and his committment of an overall settlement in Northern Nevada. However, as S-1554 is currently drafted, it falls short of the Senator's objectives and intents. Senator Reid has stated his intent not to impair or burden water users on the system who are not part of the settlement and has indicated he is not going to allow one party to the settlement to receive advantages over those not part of the settlement if there is continuing litigation that cannot be solved. These are very fair and commendable statements and Senator Reid should be proud of his integrity.

In the spirit of achieving the overall goals set by Senator Reid and the integrity in which he intends to achieve those goals, the TCID together with the coalition for a Fair Allocation of the Carson and Truckee Systems (FACTS) have proposed amendments which are compatible with Senator Reid's stated objectives. The details of the amendments have been attached to the written testimony of Churchill County. Even though the matters are described in the FACTS document, a brief outline of our concerns would be helpful to the Committee.

One concern is that PLIT claims a water allocation in S-1554 by federal fiat. The PLIT was not successful in their litigation (Nevada v. U.S., 1983 U.S.Sup.Ct.) to establish a reserve water right adverse to the other users on the system. Their current water right is the number one priority on the Truckee River and is set out in the Orr Ditch Decree. It is the current law that the United States, as well as Indian tribes, must file with the State in which they desire a water right and comply with State law and procedures in obtaining any water right. The United States is required to do so, Indian tribes are required to do so. The PLIT is a ward of the United States and would not be in a position to establish an allocation to itself by Federal legislation. This would reak havoc with the established laws in the western states. In that regard we have proposed amendments which preclude S-1554 from establishing a federal water right outside state law and procedures.

In the interstate allocation provision, the allocation to California results in the population of the cui-ui being reduced by approximately one-half. Therefore, provisions were placed in the interstate allocations indicating that because that water is allocated to California, that does not provide for action against other water users to recover water that may be needed for recovery of the cui-ui to make up for the additional use of water in California. That provision we support and have provided language to clarify the intent and implementation of that particular protective provision.

In Title II it is proposed that a new Operating Agreement and a different management scheme of the Truckee River be developed. The TCID feels that since it is a major water purveyor on the system, that they should be involved in and have approval of any agreement that is developed and intended to change the current operations of the Truckee River system in order to protect their water user's rights. The only parties specified in S-1554 which have the right to approve and develop that operating agreement are Sierra Pacific Power Company, the Pyramid Lake Indian Tribe, the State of Nevada, the State of California and the United States. Two entities that are parties to the 1935 Truckee River Agreement, which is the current operating authority on the Truckee River and which is part of the Orr Ditch Decree are not considered. The Truckee-Carson Irrigation District is the public utility for the largest number of water users on the Truckee River. The Washoe County Water Conservation District is the public utility for the second largest group of water users on the Truckee River. These two entities are currently two of three that have operating authority on the Truckee River. The other is Sierra Pacific Power Company, a private utility. By leaving these two parties out of the approval and development process for a new operating agreement, you only stimulate further concerns and litigation. In this regard, we have proposed an amendment adding the two parties to the approval of the operating agreement.

In addition, we've provided amendments to S-1554 which would facilitate and require an overall settlement of the litigation. For example, we've added a Nevada Settlement Fund which would provide federal contributions and State of Nevada contributions for improvements on the

Project to try to accomplish increases in efficiencies and to reduce losses of water. We've also added incentives for the TCID to reach agreement by asking that the repayment obligations owing to the United States be forgiven. In addition, we're asking that an additional five lawsuits be dismissed and that they be dismissed with prejudice. We're also asking that the claims that are currently being made by Pyramid Lake Tribe which will eventually result in litigation, be disposed of. To not resolve the issues between TCID and PLIT leaves open the "water wars" and does not accomplish a major objective of Senator Reid. In fact, it leads to 80 more years of "water wars" at substantial government cost and expense, through their own expenses of litigation as well as paying for PLIT attorney fees and expert witnesses. This is a very important objective of S-1554 because the issues between the Newlands Project water use and PLIT reach beyond the two parties involved. It is a regional issue. For example, the OCAP and recovery of the cui-ui have impacted on a sewer project in Douglas County upstream from the Newlands Project on the Carson River. Also, the results of the OCAP litigation will have an impact on the credit storage scheme that is the basis for agreement between Sierra Pacific Power Company and the PLIT. In addition, the failure to reach agreement continues to impact the recreational benefits of Lahontan Reservoir which is the major recreation lake in Northern Nevada.

In regard to the purchase of water rights in Title III, we've made some minor amendments for clarification purposes to carry forth with the intent of purchasing the water right for the wetlands. In addition, we've added language which clarifies the government's responsibility for continued payments to the TCID as well as the County and local entities for the loss of tax base and operation and maintenance and other revenues that are lost as a result of a purchase program by the Federal Government. We've also added language in the funding provisions of Title III to make it clear that the monies for purchase of water to the wetlands should be kept whole and provided for such other funds as may be necessary to pay the obligations of the United States in the purchase program. If the United States purchases the $16 million worth of water rights plus purchases with other monies that have been appropriated, it could cost the U. S. $500,000 to $600,000 annually in payments to the local entities, a substantial obligation. We have also added a paragraph which provides for a study to be made prior to the implementation of the major purchase program. The study would be conducted for one year prior to any purchases in an attempt to identify any impacts that could not be mitigated and to determine whether or not its feasible to go ahead with the purchase program. The potential concerns are with groundwater recharge for 4,000 to 6,000 shallow domestic wells in the Project that are dependent on the recharge from the irrigation system. If it is determined that impacts can be mitigated or avoided then the purchase program could proceed with monitoring to continue to identify and provide for mitigation of any impacts from the purchase program.

Title IV, the cui-ui-recovery provisions, seem to create a super species that would have rights and that the government would have obligations and responsibilities beyond the Endangered Species Act (E.S.A.). We have suggested amendments in Title IV to insure the recovery program can be implemented and maintained within the provisions of the E.S.A. We've also provided for funding to implement the recovery program. Since the lower Truckee River rehabilitation and

Delta access improvements are not part of S-1554, the funding provided is not intended to cover those particular expenditures. It is our understanding that separate legislation will be coming out of Environment and Public Works for the Corps of Engineers to make those improvements which are estimated to be in the range of $33 to $40 million. We've also provided that should the $20 million for the recovery program be more than sufficient, any excess funds are to be returned to the Treasury of the United States.

One additional amendment in Title IV that we suggested is a change in what happens to the water on the Fallon Naval Air Station (FNAS). We agree and the FNAS agrees that improvement in water use is a worthy goal and the Secretary of the Navy and the FNAS have worked with the U. S. Fish & Wildlife Service in developing a conservation plan for their agricultural out-lease program. The conservation plan provides 30% savings in water use. However, such waters saved in our opinion should go to the Stillwater Wildlife Refuge and wetlands area for a fresh water supply. Since the Fallon Naval Air Station water rights consists of a mixture of both Carson River water and Truckee River water which is released from Lahontan Reservoir, only about 14% of the water right (according to the EIS on the long term OCAP) is attributable to the Truckee River. For example, if the Fallon Naval Air Station were to save 1,000 acre-feet, only 140 acre-feet of that would be available for Pyramid Lake and that is not really significant when the Lake is 110,000 acres of surface area. Therefore, we feel that combined with the remaining 86%, that water right could be transferred to the wetlands and make a significant contribution to the recovery there and help reduce the amount of agricultural lands that need to be purchased for recovery of the wetlands. In addition, one major concern of the provision for transfer of the FNAS water right is that it is not made subject to state law and procedures in S-1554. Any transfer or change in water use at FNAS is subject to state law and procedures and that should be clarified in S-1554. To do otherwise creates an opportunity for dispute as to what has occurred. Another concern is that it is being provided to Pyramid Lake without agreement of the Newlands Project. When TCID and PLIT met to resolve their differences, FNAS water rights were part of our discussions. The PLIT had filed suit against the FNAS for all water owned by the U. S. in the name of the Secretary of the Navy to be discontinued and the water transferred to Pyramid Lake. The federal District Court ruled against the PLIT and in favor of allowing the Navy to continue its use for its purposes. That matter was appealed to the 9th Circuit Court by the PLIT and is awaiting decision. The concern of TCID is that S-1554 provides a bargaining benefit to PLIT without PLIT having to reach agreement with the TCID and its water users. In effect it provides an advantage to PLIT without a committment on their part to resolve the issues with the Newlands Project.

With regard to the Pyramid Lake Development Fund, the only provision that we've added is to make it clear that the purpose of that fund is not to purchase water rights within the Newlands Project unless there is an overall agreement between the parties.

In regard to the general provisions, we feel that all lawsuits should be dismissed with prejudice, as well as other potential claims in an overall settlement and have provided those amendments. Only one lawsuit is currently dismissed with prejudice. The other lawsuits are dismissed but they can be renewed.

The Truckee Canal traverses the Pyramid Lake Indian Reservation. Also, there are Newlands Project facilities located within the boundary of the Pyramid Lake Indian Reservation. Our concern with the provision for all lands within the Reservation to be held in trust only for PLIT is that it will cause a problem for the continued use of these facilities within the boundaries of the Pyramid Lake Indian Reservation and therefore, that is the reason for our amendment to that provision.

One additional area of concern is the allocation of Stampede Reservoir and Prosser Reservoir to PLIT. Stampede Reservoir should continue to be utilized for recovery of the cui-ui until that has been accomplished, and then those resources should be made available for development in Northern Nevada. Prosser Reservoir is licensed to supplement the flow of the Truckee River for all water users on the system and since we are a major beneficiary of that permit and license, we believe it should not be changed without agreement of the parties affected. It would very definitely impact water available to the Newlands Project and in that regard, we've suggested amendments to exclude Prosser Reservoir from consideration.

We appreciate the opportunity to have participated in this process and will continue to participate to see that our amendments are given further consideration as well as trying to meet the overall objectives of Senator Reid in this legislation. We would hope that you would favorably consider and implement our amendments as they are protective measures only and do not interfere with others water rights. The failure to implement our changes would be contrary to Senator Reid's intent and integrity. In addition, it would create tremendous advantages to the PLIT in the continued litigations. Something that was and is to be avoided. Thank you very much.

Senator BRADLEY. Thank you very much to all of you for your comments. I think it is particularly appropriate that you would be the last panel to comment, because you offer a slightly different perspective than the one that we have heard throughout the hearing. And I take your reservations, Mr. McConnell, and you raised a number of concerns that we will have to look at very carefully.

The basic question, though, and maybe you can help us resolve the basic question, and that is that the Newlands project wants a lot of water, let's say, or more water than it can get, and at the same time have the Pyramid Lake fisheries amply met. As you say, the gap between 300,000 and 408,000 acre-feet is very sizable. How do you suggest that we resolve that, given the commitment that you believe has been made to the Newlands project and given the very clear need to save the Pyramid Lake fisheries and the lake?

Mr. MCCONNELL. I don't necessarily subscribe to the argument that more water is the only resolution to the problem with the cui-ui. So I am not necessarily, in response to that question, agreeing that perhaps the resolution of the cui-ui problem is the reduction of the——

Senator BRADLEY. That's fair enough. You question the premise whether they need more water. What is the answer then, if it isn't more water?

Mr. MCCONNELL. I am not sure. We have been in the process with the recovery of the cui-ui, and we have various solutions or alternatives. We were asked, we asked to participate in that with the Fish and Wildlife Service, and provide our assistance through experts that we would ask to join in with that process. And they indicated that at this time they didn't need our help. But that is beside the point.

I am not trying to say that the issues can't be resolved, because they possibly can be resolved. There are alternatives to that resolution, and one of the things, like I mentioned to you, that made it difficult for us to attempt to reach agreement in the first negotiation session was the fact that there was clear indication that there wasn't going to be any Federal money to make improvements on the project. If those monies are available, maybe perhaps some water can be saved and can be help to offset the differences.

Maybe there is opportunities to, part of that 73,000 acres is not always irrigated, and so the problem that that creates is that, like a utility, if they have customers available they have to be able to have the supply to supply those customers. If some of the unused water rights were purchased, maybe perhaps that gives an opportunity to reduce the overall demand for the project. In addition, there might be some other alternatives that can be come up with, and we are looking at those very closely.

We are appreciative of the opportunities by the committee here, as well as Senator Reid's commitment to try to see if we can try to solve those problems and give us another opportunity within the next 90 days to come up with some solutions. And we are going to try to take advantage of that as much as we possibly can. And we are working with some hydrologists to come up with new ideas. We are hoping that perhaps, in the process of the committee's concern about an overall settlement, that they also are able to provide those financial incentives for improvements.

One area that we think is necessary, however, in this is that in order for us to make sure that there is a settlement, there has to be some incentive on the other side in order to negotiate. If in this case we are negotiating with Pyramid Tribe and they are able to receive all the benefits that they intend to get from the bill, then they have no real incentive to negotiate with us.

For example, just as an example, part of the discussions that we had early on was the Fallon Naval Air Station water. That Fallon Naval Air Station water then has now been provided in the bill to Pyramid Lake, which takes an opportunity away from us.

Senator BRADLEY. So basically you are saying you are willing to sit down and negotiate. Is that right?

Mr. MCCONNELL. That is correct.

Senator BRADLEY. Mr. deBraga, is that right?

Mr. DEBRAGA. Yes, Sir. I have been on the board for 16 years. I actually——

Senator BRADLEY. Let me ask you this, then. Who on the board has authority to conclude negotiations?

Mr. DEBRAGA. The water users.

Senator BRADLEY. Tell me, how would you conclude a negotiation? How would TCID conclude negotiations?

Mr. DEBRAGA. I think——

Senator BRADLEY. Is there a person? Are there limitations on the person's negotiating authority?

Mr. MCCONNELL. The current condition of the negotiation process with the district is this, that we have been given a very strong vote for negotiations.

Senator BRADLEY. Who has been given?

Mr. MCCONNELL. I have, and Chairman DeBraga. And within that process then, the only limitation that we were given from the standpoint of negotiations is that the overall agreement would have to be approved by the water users. I don't see that as a particular problem, but the reason for that is that on our project the water users own the water rights, rather than the district having some kind of a water delivery contract with the Bureau. So it is a different situation. We have individuals that own their water rights and can transfer those around, sell them, and do whatever else they can within the State law parameters.

Senator BRADLEY. Mr. Sayre made an interesting comment today when I was asking about operational versus structural changes in the way things occur. And he said that there are structural things you could do, like line some canals. As I read it, the TCID's repayment contract specifies that the district shall promptly make any and all repairs to project facilities which, in the opinion of the Secretary, are deemed necessary for the project's proper care, operation and maintenance. That is a correct reading of the contract.

Mr. MCCONNELL. I take your word for it.

Senator BRADLEY. Well then, do you think that TCID could be held responsible for the cost of plugging the leaks in Derby Dam and along the Truckee canal?

Mr. MCCONNELL. Well, it kind of depends on what is the cause and the result of those leaks. If it is a repair item, certainly. If it is a construction project or a complete rehabilitation, then maybe not. Maybe it is just the result of the fact that the condition of the system is so old, since it is a 75 to 80 years old project that was never designed to be real efficient from a water use standpoint. It was an earthen, primarily an earthen project.

Senator **Bradley**. So that the committee will know your role up to this stage, did TCID participate in negotiations for a while?

Mr. **McConnell**. Yes.

Senator **Bradley**. For how long? Half a year, seven months, ten months, 50 years?

Mr. **McConnell**. I have only been with the project for five years. They were involved in negotiations in the past. As you are probably aware, there was legislation that was introduced in 1985. Those negotiations went on for some period of time before that bill was introduced. Subsequent to Senator Reid being reelected, he once again opened up the negotiations process and sat down and facilitated that through his staff, sat down with the major parties to that negotiation. And in the process then it was decided that maybe perhaps the groups ought to split up into small individual group sessions so that they can focus on the particular issue between those individuals.

We participated in that process, and as I indicated in my testimony, the problems that we had there was that the United States indicated to us that there wasn't going to be any funding provided for improvements. There wasn't going to be any change in the OCAP. And yet they left us with this tremendous task to try to solve the differences in the water needs between what the tribe was trying to approach and what our necessarily requirements were in the sense of having an obligation for that project. We tried various alternatives. We tried and suggested some alternatives. Those weren't able to be concluded.

When it came back to the larger group that was explained to the group, and at that point the tribe indicated that they would like to go forward with the discussions with the other parties. We did not leave the table. I continued to participate in the larger group sessions to the extent that I could, with the hope that perhaps a solution could be arrived at. That didn't occur.

Senator **Bradley**. You are the Lyman McConnell who was on the National Water Resources Association Board from Nevada?

Mr. **McConnell**. Yes, I am. I still am.

Senator **Bradley**. Have you talked to Mr. Sayre about the Truckee-Carson project?

Mr. **McConnell**. In the process of becoming a director on that association, I have only been on there a couple of years. So when Mr. Sayre was President I was not on the board at that time. Mr. Dale Shokee from DRI was the representative in Reno. I had an opportunity recently to talk to Mr. Sayre about the Senate Bill and about the operating criteria, and that was down in San Antonio recently at a water conference, after he was made Assistant Secretary, just prior to him leaving the board. I mentioned the fact that we had problems that we never really got into a full focus discussion on our particular project in that forum. We have never had the opportunity.

Senator **Bradley**. But you mentioned it to him when he was on the board? That is what you just said.

Mr. **McConnell**. Just about the time that he was leaving.

Senator BRADLEY. Let me ask you, Mr. Getto, and I guess Mr. DeBraga too, because each of you talked about your families having been in the area for 60 years.

Mr. DEBRAGA. 74 years.

Senator BRADLEY. When your families came there, Lake Winnemucca existed, right?

Senator GETTO. Yes.

Senator BRADLEY. How do you feel, as someone who has been in the area all that time, to now drive north and see a desert?

Mr. GETTO. I guess maybe it was a trade off. When my parents came there there wasn't a green oasis, and Churchill County was just the Truckee River ran through there and there were a few trees and there was some farming. And what happened is that area became an oasis in the desert. And Pyramid Lake was still there, but Lake Winnemucca did dry up. And Pyramid Lake, as I have noted, in the last 10 years, or 15, 20 years, is pretty well stabilized. It is much higher now than it was in 1969, and that is with going on our fourth year of a drought.

Mr. DEBRAGA. Any time that a wetlands or anything of that nature is affected, it bothers anybody and everybody who lives in the area, people who don't even live in the area. It is a resource that should be protected. That is why the irrigation district has set aside certain areas in Carson Lake pasture as a wetlands area.

We have signed an agreement that has U.S. Fish and Wildlife Service, the Nevada Department of Wildlife, and the Truckee-Carson Irrigation District on the water wildlife management area and the refuge area. We have agreed to sign off the applications that the district had on the drainage water, so that drainage water could be protected to go to those areas. We have agreed to the water purchase programs, so that that water can go to the wetlands.

Senator BRADLEY. So basically you think that the trade off was worth it? That you give up Lake Winnemucca and you have, as Mr. Getto says, a green oasis in Churchill County? That is a point of view. I am not making a value judgment, I am just interested in the opinion of people who lived in the area for so long and are so deeply attached to it. It is a different place now than when your ancestors arrived.

I am curious whether you feel a sense of loss, or whether you feel that this is something that has evolved the way it was intended to, or whether you believe that there were mistakes made along the way. I am just trying to—this isn't going to appear in the legislation. This is what is known as the Chairman's prerogative to ask the final question to assess a mood.

Mr. DEBRAGA. it bothers me, like I indicated. When Senator Newlands, I guess, had the concept to go out and develop the project it was originally set aside for 230,000 some odd acres to be irrigated. There just isn't enough water in the system to do that. But somewhere along the line somebody made some mistakes and enticed my family there. The Federal Government has a trust responsibility for the water users on the project. They have the responsibility to the Indian tribes, both of them. They were there a long time before the white people were.

And so yes, there is real concern, and there is lots of obligations. And a lot of people hurt over this.

Senator BRADLEY. Mr. Getto?

Mr. GETTO. Might I add, Mr. Chairman, I have feelings, for instance, about the wetlands in Churchill County and with Lake Winnemucca. I never did see Lake Winnemucca when there was water in it. All I know now is a flat. It was not a deep lake, for instance like Pyramid Lake is. But the wetlands, as I said in my remarks, I introduced a bill for Nevada to, if the voters go along with it, to appropriate $5 million plus more, and I think that I want to see those wetlands restored with fresh water. And the Senator's bill will help do that.

Senator BRADLEY. You would like to see Lake Winnemucca?

Senator GETTO. No, the wetlands. The Stillwater wetlands and the ones on the Indian reservation.

Senator BRADLEY. Well, let me say that I appreciate you taking the time to share your thoughts with the subcommittee. This has been a good day for me in terms of hearing the various points of view. And, obviously in these matters, you like to believe that you could make everybody happy. I don't know if we can in this one, so this subcommittee is going to be balancing a lot of equities and inequities.

One of the people who testified today, I think it was David Kennedy, said the problem is that there is a limited amount of water and it was promised to too many people. That is probably correct. Therefore if you are faced with that problem as a subcommittee, a legislator or as someone who is supposed to look after the public interest, where do you go to begin to make your judgments? What are the principles that you apply to make your judgments? That really is going to be the thing that we will be wrestling with.

So I thank all of you for your participation today. I would hope that you seriously attempt to resolve some of the problems in the next 90 days, to make it as acceptable to as many people as possible. This issue involves every aspect of western water that one can imagine. And that is why it is so difficult and so fascinating. Let me thank you all very much for your attendance and for your testimony. The committee is adjourned.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

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SENATE COMMITTEE ON
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Honorable J. Bennett Johnston
Chairman, Committee on Energy and
  Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to additional questions requested following the hearing before the Subcommittee on Water and Power on February 6, 1990, regarding S. 1554.

The enclosed information has been prepared for insertion in the record.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Pamela Somers
Pamela E. Somers
Legislative Counsel

Enclosure

cc: Honorable Bill Bradley, Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate

Supplemental Questions on S. 1554

Questions for the Department of the Interior

1. Question What are the cost impacts of this bill for the following:

(a) Rehabilitation of fishery habitat in lower Truckee River?

(b) Additional property tax burden to Churchill County residents over 50 years resulting from property taxes foregone on agricultural lands retired by wetlands water purchase?

(c) Fifty-year payment to Truckee-Carson Irrigation District for operation and maintenance (O&M) charges on lands involved in wetlands water purchase, and hydrogeneration revenues foregone, 10,000 acres, at annual O&M charge of $24 per acre = $240,000 x 50 years?

Answer The following is our best information with regard to the cost impacts of this bill on these specific issues:

(a) Rehabilitation of the lower river will require: (1) stabilization of the channel to reduce the sediment load and to improve water temperatures; and (2) maintaining a channel through or around the river delta at the mouth of the Truckee River for easy access for cui-ui to their river spawning grounds. Accurate cost figures are not available because projects to achieve these goals have not been designed nor tested.

The Corps of Engineers (Corps) is preparing a reconnaissance study on the lower Truckee River, Nevada. The study will help determine if there is a Federal interest in providing modifications along the lower Truckee River to resolve the flood control related issue and environmental problems, particularly with reference to improving fish and wildlife habitat for the endangered cui-ui and the threatened Lahontan cutthroat trout. This study is scheduled to be initiated in September, 1990. Neither the Corps nor the Bureau of Reclamation (Reclamation) has estimated the costs of rehabilitating fishery habitat.

(b) Property Tax Burdens Churchill County (Board of County Commissioners testimony, p.5 and Appendix B) refers to a potential 50-year property tax burden in excess of $30 million (about $3,200 per acre) following the removal, via federal purchase, of $16 million in assessed value from the county tax roles. This estimate overstates potential burdens by (1) failing to discount future-year dollars; (2)

failing to account for the difference between fair market value and agricultural use assessments for expected tax receipts in the absence of federal purchase; (3) failing to consider shared revenue payments from the Service in the case of land-plus-water purchases; and (4) assuming that all purchases take place in "year 1" rather than over a 5-10 year period.

Some of the land would likely be converted to residential or commercial industrial use, in which case the amount of property tax could increase (irrigated land cannot be subdivided in less than 20 acre plots for this purpose without first stripping off the water rights--this has been occurring already). Additionally, such lands as are included in a refuge would generate payments in lieu of taxes through the National Wildlife Refuge Fund. To better address this issue, the Service is undertaking a socio-economic study into this complex issue. A final report is expected by the end of December 1990.

(c) The payment to the District for O&M charges on lands involved in wetlands water purchase of approximately 10,000 acres, at annual O&M charge of $24 per acre equals $240,000 per year. For 50 years, the O&M payment equals $12 million. However, this figure does not include the inflation rate for the $24 per acre charge. At a projected inflation rate of 4 percent, the nominal value would be $36,640,100. The total present worth value of that amount was calculated using the plan formulation rate for fiscal year 1990 and is $44,424,772.

2. Question What does the United States get as consideration for the $75 million grant to the Pyramid Lake Paiute Tribe (Tribe)?

Answer The Department is unaware of any consideration to the United States as a result of the $75 million grant to the Tribe.

3. Question Does the bill settle all of the claims for water on the Truckee River?

Answer The bill does not resolve many of the claims on the river systems. Only a few of the outstanding claims will be settled by this bill, primarily those of the Tribe and Sierra Pacific Power Company (Sierra-Pacific). A number of litigative issues involving the Newlands Project and the District are not resolved by S. 1554. A list of these cases is enclosed.

4. Question Does the bill offer protection that the Newlands Project will remain a viable and efficient system following the retirement of several thousand acres of agricultural land?

Answer This question cannot be answered definitely since S. 1554 has a monetary limit for acquisition of water rights but not an acre-foot or acreage limitation and not a locational limitation. Since the purchase would be on a willing seller basis, it is possible that actual purchases would be scattered in such a way as to reduce the efficiency of the Project. This would be counter to the goal of the Operating Criteria and Procedures designed to improved the efficiency of the Project. On the other hand, purchases of all water rights in certain strategic locations could improve project efficiency by eliminating relatively less efficient-to-irrigate section. The result of purchases on efficiency, therefore, are uncertain but will be taken into account, along with other criteria, in selecting lands for purchase. The bill provides the Secretary with the authority to reimburse for the full operation and maintenance costs for conveyance of federally purchased water. Consequently, if the Federal Government and other beneficiaries of the purchased water were to provide reimbursement, then there would be no undue hardship placed on irrigation project. It should be noted that the Fish and Wildlife Service already has the authorities provided in section 301 of S. 1554 and is proceeding with water purchases in the Newlands Project area.

5. Question Does the bill insure that water purchase will permanently inure to the benefit of the Lahontan Valley Wetlands?

Answer S. 1554 does not insure that water rights purchased for Lahontan Valley wetlands will permanently inure to the benefit of the wetlands. Section 301 (a) states"... to transfer, hold resell, or otherwise dispose of such water rights and related interests to benefit Federal and state wildlife areas in the Lahontan Valley and the Fernley Sink..."

H.R. 3941 Section 301 (a) states "the Secretary is authorized to purchase water rights, with or without the lands to which they are appurtenant, to supply fresh water to benefit Federal and state wildlife areas in the Lahontan Valley and the Fernley Since... water rights purchased under this section shall, to the maximum extent practicable, be used annually for direct application to such wildlife areas and wetlands." This language is clearer than S. 1554 and protects the prime water rights purchased for Lahontan Valley wetlands.

In order to clarify location of wetland areas, it should be pointed out that the Fernley Sink is not part of the Lahontan Valley wetlands.

6. Question Does the bill have a negative impact upon the water supply of the Newlands Project?

Answer The Department is currently examining the Preliminary Agreement and the modeling of the potential results of the agreement. The results of that examination, including an assessment of the effects on the water supply of the Newlands Project, will be provided to the Committee when complete.

Supplemental Questions on S. 1554

Questions for Assistant Secretary Sayre:

1. Question How would you suggest addressing the issues raised by the District in their testimony? Which proposed amendments, if any, does the Department support and which does the Department oppose?

Answer Many of the issues raised by the District in its testimony were also raised by the Department. Although we do not necessarily agree to the exact language of the amendments proposed by the District, we agree with the concepts of the following:

a. The Tribe should not be allocated water by Federal mandate, but should receive any water right through existing state laws.

b. The interstate allocation of water should not provide a basis for future legal action against any other water user.

c. The Department strongly objects to the participation arrangements provided in S. 1554. By far, the preferable and most proper arrangement is for the operating agreement to be negotiated by the United States, California, and Nevada. It is appropriate to anticipate a process for this agreement involving consultation and negotiation with all parties at interest such as Sierra Pacific, Truckee-Carson Irrigation District, the Fallon and Pyramid Lake Indian Tribes, and the various counties using water in the two river basins including Churchill and Washoe Counties, and the Department is willing to commit to such a process. No other parties, however, should have a veto power over the agreement.

d. It would be beneficial if the legislation could settle issues among all parties, but it definitely should not abrogate the rights of some parties at the expense of others without compensatory measures.

e. The requirement to pay O&M and other assessments for water rights purchased for the wetlands from Newlands Project lands is needed.

f. There is need for a study to determine the impacts associated with purchasing $16 million worth of water rights from Newlands Project lands.

g. The water rights on the Fallon Naval Air Station (Air Station) should not be transferred to Pyramid Lake.

h. The Department is examining the question of whether or not other lawsuits could also be settled. A position on this will be provided later.

i. The Department is examining the issue of permanent allocation of Stampede and Prosser Creek Reservoirs to Pyramid Lake fish. The Department will provide a position on this issue at a later date.

j. In addition, the Department is examining the question of allocation of implementation costs.

2. Question Did the Department offer any assistance during the negotiations that produced S. 1554 to help facilitate a settlement between the District and the Pyramid Lake Paiute Tribe? If so, please describe that assistance.

Answer The Department was not invited into the negotiation conducted until May 1988, when positions had hardened. The District withdrew from negotiations about this same time based on an agreement between it and the Tribe that their differences would be settled through the Newlands Project Operating Criteria and Procedures submitted to the Court by Reclamation. Reclamation met separately with the Tribe and the District to discuss proposals and offer technical expertise in evaluating proposals.

3. Question Does the Department support making any structural changes in the Newlands Project to increase its efficiency and decrease its water usage? If so, what are they, how much will they cost, and how much water will they conserve?

Answer The Department supports the concept of making structural changes to the Newlands Project in at least two ways:

(1) The OCAP provides a strong incentive and expectation that the

irrigators will improve the efficiency of the project. Some of the conservation measures suggested to TCID are structural.

(2) Some "conserved water" may be less expensive than outright water purchases. If this is the case and if the rights to that water can be obtained by the Fish and Wildlife Service, then it could be in the interest of the Federal Government to make cost effective structural changes to the Newlands Project. The Department would recommend authorization for such structural changes conditional upon obtaining the relevant water rights. The Department is currently examining the question of what structural changes could be made.

Additionally, the Department has not ruled out proposing structural changes as part of an overall settlement that is advantageous to the U.S. Government.

4. Question Does the Department of the Interior support undertaking any rehabilitation and betterment of Newlands Project facilities in order to increase the Newlands Project's efficiency and decrease its water usage? If so, what are those measures, how much will they cost, and how much water will they conserve?

Answer These questions are answered in the response to No. 3 above.

5. Question Does the Department support implementing water pricing reforms at the Newlands Project in order to encourage water conservation? If not, please describe your reasons for opposing water pricing reform. If so, please describe options the Department would find beneficial.

Answer The Department is willing to examine water pricing changes but is not optimistic about their effects for the following reasons:

Currently all charges by the District are based on water right acres owned, not on the quantity of water ordered. Those charges include the construction charge and O&M charge. The charge is the same whether or not those lands are irrigated.

Construction Charge The District's original construction costs are repaid in accordance with the terms and conditions of numerous individual water right agreements either between the United States and the landowner or the District and the landowner. Those water agreements require annual payments based on the water righted acres, not the acre-feet delivered. Most of the water rights agreements have a $54 per-acre charge, although the agreements may vary in the annual per-acre charge. To try to produce revenue by requiring payment based on the water ordered for delivery for the original construction cost is not consistent with the terms of the individual water right agreements.

The other contracts between the United States and the District are repayment contracts not water service contracts. That also lends itself only to a charge on an acre basis not an acre-foot basis. If the obligation is repaid by the District on an acre-foot basis, it concerns us that the revenues collected may not cover the cost of the annual obligations in some years and therefore may jeopardize the District's repayment (for example in a dry year).

O&M Charge The O&M charge is developed on an acre-foot basis but applied to the number of water right acres owned. There is a minimum charge of $65 per landowner. This year the O&M charge is $23.90 per acre of bottomlands (3½ acre-foot water right) and $25.50 per acre of benchlands (4½ acre-foot water right).

Currently, the District collects revenue to repay its O&M charges based on water righted acres whether those acres are irrigated or not irrigated. If we require the District to collect O&M charges on an acre-foot of water ordered rather than on the current acre basis, it will reduce the number of acres and landowners that the District can collect revenues from and will ultimately increase the charge to water users actually irrigating. Reclamation has already determined (in a 1985 payment capacity study) that the District is deficient in its payment ability by $2.43 per acre. Since that determination, the District has assumed a repayment obligation for emergency work of $24,000 a year and also a repayment obligation for Safety of Dam Modification on Lake Tahoe Dam. If we revise the District's method of collecting revenue for O&M to a per acre-foot delivered basis, it could cause a further deficit in the District's payment capacity. The amount of water right acres in the District is 73,840 acres and the amount of water right acres that actually receive irrigation water in a year is approximately 60,000 acres. Therefore, at the least, if the basis for charging for O&M is on lands irrigated, the cost to the landowner actually irrigating will increase sufficient to make up that difference. Table 2 is enclosed to demonstrate our concern.

6. Question Within the Newlands Project, what size parcel of agricultural land in production is considered by the Bureau of Reclamation to constitute a viable farm?

Answer The purpose of the Reclamation program is to provide opportunities for family farm operations.. Based on our observations of the Newlands Project, we have found that farms as small as 20 to 30 acres can be viable. Reclamation has previously furnished information indicating that 89 percent of the land holdings in the Newlands Project are 40 acres or smaller. Table 3 showing the landownership is enclosed.

7. Question How many individuals use Newlands Project water for agricultural production on parcels of 40 acres or larger?

Answer There are approximately 460 water-right ownerships of 40 acres or more in the Newlands Project and about 400 of these owners are currently utilizing their water right. The 400 ownerships represent about 70 percent of the presently irrigated land.

8. Question How many individuals use Newlands Project water, either as surface or ground water, for domestic consumption?

Answer The Newlands Project water supply consists entirely of surface water from the Carson and Truckee Rivers. None of the Project water supply is used for domestic consumption because all of the domestic water is obtained from wells which are substantially recharged from irrigated acreage.

9. Question How many individuals in the Newlands Project area use ground water drawn from aquifers recharged in part or in whole by Newlands Project water as a domestic water source? How many individuals outside the Newlands Project area use ground water drawn from aquifers recharged in part or in whole by Newlands Project water as a domestic water source?

Answer Approximately 11,500 individuals in the Newlands Project area derive their domestic water supply from shallow aquifers that are recharged primarily by Project losses. Of this population, about 9,000 are located in the Carson Division and 2,500 are in the Truckee Division. The remaining population of 9,500 in the Carson Division and 5,000 in the Truckee Division are served by individual or community wells in deeper aquifers that may be partially recharged by Project losses.

10. Question How many individuals reside within the Newlands Project area? Please distinguish between Truckee and Carson divisions.

Answer The population of the Carson and Truckee Divisions is estimated to be 18,500 and 7,500, respectively.

11. Question Please describe all environmental analyses that were prepared by the Department or its agents prior to construction of the T-J Drain (Drain). Please provide citations to any document which analyzed the potential for contaminant transport in the Drain waters.

Answer To Reclamation's knowledge, no environmental analyses were prepared by Reclamation prior to construction of the Drain. We are inquiring with other organizations to determine if any analyses are available. If we find any such analyses, we will submit them to the Committee as soon as possible.

12. Question Your testimony states that S. 1554 "requires the use of Stampede Reservoir for presently unauthorized purposes." Please describe the current authorized purposes for Stampede and contrast those purposes with the purposes called for under S. 1554.

Answer Stampede Reservoir is authorized under the Washoe Projects Act of August 1, 1956, for irrigation, flood control, hydroelectric power, fish and wildlife, and miscellaneous purposes which would be municipal and industrial (M&I) purposes. Because of the Endangered Species Act and the decision rendered in Phase II of Judge Solomon's Opinion dated October 4, 1982, in the lawsuit, Carson-Truckee Water Conservancy District, et al. v. the Secretary of the Interior and Pyramid Lake Paiute Tribe of Indians, C-R-76-152-GJS, the Secretary has chosen to operate Stampede Reservoir for flood control and for the benefit of the endangered cui-ui and threatened Lahontan cutthroat trout. However, S. 1554 provides for the storage of non-Project water in Stampede Reservoir for M&I purposes. Language could be included in S. 1554, which provides: (1) for the storage of non-Project water in Federal facilities for M&I purposes and, (2) that the non-Project water has priority over Washoe Project (Project) water supplies in Stampede Reservoir. No such authority currently exists.

The Warren Act (36 Stat. 925) provides for the storage of non-Project water in Federal facilities only for irrigation purposes. The Warren Act also provides that the storage of non-Project water in Project facilities is in excess storage space. S. 1554 provides (in the incorporated preliminary agreement) that the firm M&I credit water ". . . shall not spill or be subject to evaporation losses unless it is the only remaining water in Stampede Reservoir. . . ." This provides higher storage priority than if it were excess storage space.

13. Question Your testimony raises concerns about the absence of express requirements for local cost sharing in the implementation of S. 1554. In the

Department's view, what percentage of local cost sharing is appropriate for the legislation? For costs associated with implementation of the interstate allocation agreement? For costs associated with wetlands preservation? For costs associated with implementation of the Endangered Species Act? For costs associated with settlement of Indian water claims?

Answer S. 1554 provides benefits to Sierra Pacific and appropriate compensation is warranted. The bill provides other benefits to the State of Nevada and the State should cost share for those benefits. We are not aware of any Indian water claims settled by S. 1554.

14. Question Under present law, may owners of water rights dedicated to protection of Lahontan Valley wetlands store such water in Lahontan Reservoir? If so, under what conditions? If not, why not?

Answer Solicitor Opinion M-36967 dated July 10, 1989, responded to the Secretary's inquiry regarding the authority of the Secretary to acquire water rights for fish and wildlife purposes and transport the water through Reclamation facilities within the Newlands and Washoe Reclamation Projects to Stillwater Wildlife Management Area (Stillwater). The opinion concluded that the Secretary does have ample authority to acquire Project water rights for fish and wildlife purposes at Stillwater and to transport water so acquired through Project facilities for use at Stillwater. In addition, the proposed use of the water at Stillwater must be reviewed by the Nevada State Engineer, and he must approve it prior to completion of the transaction and delivery of the water. A copy of that opinion is enclosed.

15. Question Please describe the status of Newlands Project water rights. Are they held by the United States, the District, or the individual project farmers? Does the United States hold any water rights in or around the Carson Desert which were not specifically adjudicated in the Orr Ditch or Alpine proceedings? If so, please describe those rights.

Answer The water rights for the Newlands Project are held in the name of the United States for the benefit of the individual or entities to whom that water has been allocated by the Secretary under water right agreements. Therefore, the beneficial interest in the water right belongs to the individual farmers. All water rights for the Newlands Project are adjudicated by the Orr Ditch Decree and the Alpine Decree. Therefore, the United States does not hold any rights not adjudicated by those proceedings.

16. Question Does the Department have an opinion on the merit of exploring development of Dixie Valley water to meet agricultural, domestic, or environmental water needs in the Lahontan Valley?

Answer The Department lacks sufficient information to make a judgment on the merit of developing Dixie Valley Water, but will be examining that question in a new study being initiated. Reclamation has just entered into a cooperative agreement with the State of Nevada to perform a "Northern Nevada Water Augmentation Study." This study will examine potential methods of augmenting and/or optimizing the water supplies in Northern Nevada. Options including use of Dixie Valley will be evaluated as to their potential for further study and development. The Northern Nevada Water Augmentation Study should be completed in approximately 3 years.

17. Question How much time would be required to conduct a study to determine the feasibility of providing a closed system domestic water supply to the Fernley and Fallon areas using Newlands Project water?

Answer Existing community systems in Fallon and Fernley serve populations of 3,300 and 5,000, respectively. A study to determine the feasibility of expanding these water systems and converting to Newlands Project water would take approximately 1 year to complete.

18. Question Under current law, can the Newlands Project be operated to provide domestic water supply to the Fernley and Fallon areas? If not, please describe the obstacles.

Answer The Newlands Project was authorized for irrigation purposes only under the Reclamation Projects Act of 1902. Therefore, to provide domestic water to the Fernley and Fallon areas would require reauthorization to include M&I use and to recover an appropriate share of interest for such use. Water rights for the Newlands Project provide for M&I use.

19. Question Has the Department ever surveyed Newlands Project farmers to determine whether and on what terms farmers would be willing to provide water for the benefit of the Lahontan Valley wetlands? If so, please provide the results of that inquiry.

Answer The Department has not surveyed Newlands Project farmers to determine whether and on what terms farmers would be willing to provide water for the benefit of the wetlands. We are inquiring with other organizations to determine if any analyses are available. If we find any such analyses, we will submit them to the Committee as soon as possible.

20. Question Does the Department believe that Lahontan Reservoir could be used in a "water banking" operation, similar to that which operates on the Snake River, in order to increase flexibility of supplies for various purposes within the Lahontan Valley? If not, why not? If so, can you recommend a preferred approach?

Answer The "water banking" operation has proven to be very effective in areas where the United States owns the water rights for a project and markets that water to water user entities. Any water not used by one entity can be banked and then sold or leased to another entity, thereby encouraging conservation and better use of a limited water supply. However, on the Newlands Project, the water rights belong to each individual user and are attached directly to the land. Under present laws and restrictions, if a farmer conserves water on the Newlands Project, it cannot be "saved" in Lahontan Reservoir but rather becomes available to all other users on the river system. If water rights are acquired by local communities or other organizations, then the water bank concept might be a promising tool.

List of Cases involving Truckee and Carson Rivers remaining if S.1554 is passed as introduced on August 4, 1989

Cases that will continue in litigation after S. 1554

1. Pyramid Lake Paiute Tribe v. Lujan No. CV-R-85-197, D. Nev. (OCAP case - previous decision Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D.D.C. 1973)

2. U.S. v. Alpine (Bench/Bottom case.) No. Civ-D-185, D. Nev., remanded after appeal to Ninth Circuit Nos. 88-2539 and 2542.

3. U.S. v. Alpine (Water Right Transfers), No. Civ-D-184, D. Nv., Nos. 87-1746, 1747, Ninth Circuit. Opinion issued on July 7, 1989 affirming in part and reversing in part.

4. Pyramid Lake Paiute Tribe v. Hodel, CV-R-85-197, D. Nv., No. 86-1915, Ninth Circuit. (1986 Motion by tribe to require Secretary to enforce provisions of 1973 OCAP). Appeal partly reversed district court's order dismissing motion. Opinion dated July 7, 1989.

5. Pyramid Lake Tribe v. Hodel, (Appeal from district court's order in CV-R-85-197 (OCAP case) requiring releases of Stampede Credit water in 1988. On remand to district court after Ninth Circuit Nos. 88-15116, 15117, was decided.

6. Pyramid Lake Tribe v. Cities of Reno and Sparks, No. CV-R-85-205 RDF, D. Nv. (Suit by tribe over water quality in Truckee River. [There is also a related case against EPA which is inactive, No. CV-R-86-438 RDF) (There was apparently an earlier case against Reno which was dismissed, No. CV-R-82-250-BRT, and also an earlier case against EPA, No. CV-R-81-274 BRT which is also closed).

7. U.S. v. Orr Ditch (Reno change of place case) - Equity A-3-4, D. Nv. (Judge Foley). Now on appeal to Ninth Circuit, Case No. 89-15179.

Decrees that may be affected by S. 1554

1. U.S. v. Orr Water Ditch Co., No. Equity A-3, D. Nev. Originally filed in 1913. (Decree establishing water rights to Truckee River).

TABLE 1

FN:OCMP1
Last Revised: 3/15/1990
Interest Rate .08875

Number of Acres: 10,000
Annual O&M Cost: 24.00/Acre
Projected Inflation: 1.04

No. of Years	Amount	Product	Present Worth	Present Value	No. of Years
1	240,000	240,000	.9184845	220,436	1
2	240,000	249,600	.8436138	210,566	2
3	249,600	259,584	.7748462	201,138	3
4	259,584	269,967	.7116842	192,132	4
5	269,967	280,766	.6536709	183,529	5
6	280,766	291,997	.6003866	175,311	6
7	291,997	303,677	.5514458	167,461	7
8	303,677	315,824	.5064944	159,963	8
9	315,824	328,457	.4652073	152,800	9
10	328,457	341,595	.4272857	145,959	10
11	341,595	355,259	.3924553	139,423	11
12	355,259	369,469	.3604641	133,180	12
13	369,469	384,248	.3310807	127,217	13
14	384,248	399,618	.3040925	121,521	14
15	399,618	415,602	.2793042	116,079	15
16	415,602	432,226	.2565366	110,8[illegible]	16
17	432,226	449,515	.2356249	105,917	17
18	449,515	467,496	.2164178	101,174	18
19	467,496	486,196	.1987764	96,644	19
20	486,196	505,644	.1825730	92,317	20
21	505,644	525,870	.1676905	88,183	21
22	525,870	546,904	.1540211	84,235	22
23	546,904	568,781	.1414660	80,463	23
24	568,781	591,532	.1299343	76,860	24
25	591,532	615,193	.1193427	73,419	25
26	615,193	639,801	.1096144	70,131	26
27	639,801	665,393	.1006791	66,991	27
28	665,393	692,008	.0924722	63,992	28
29	692,008	719,689	.0849343	61,126	29
30	719,689	748,476	.0780108	58,389	30
31	748,476	778,415	.0716517	55,775	31
32	778,415	809,552	.0658110	53,277	32
33	809,552	841,934	.0604464	50,892	33
34	841,934	875,611	.0555191	48,613	34
35	875,611	910,636	.0509934	46,436	35
36	910,636	947,061	.0468367	44,357	36
37	947,061	984,944	.0430187	42,371	37
38	984,944	1,024,342	.0395121	40,474	38
39	1,024,342	1,065,315	.0362912	38,662	39
40	1,065,315	1,107,928	.0333329	36,930	40
41	1,107,928	1,152,245	.0306158	35,277	41
42	1,152,245	1,198,335	.0281201	33,697	42
43	1,198,335	1,246,268	.0258279	32,188	43
44	1,246,268	1,296,119	.0237225	30,747	44
45	1,296,119	1,347,964	.0217888	29,370	45
46	1,347,964	1,401,882	.0200126	28,055	46
47	1,401,882	1,457,957	.0183813	26,799	47
48	1,457,957	1,516,276	.0168829	25,599	48
49	1,516,276	1,576,927	.0155067	24,453	49
50	1,576,927	1,640,004	.0142427	23,358	50

TOTAL NOMINAL VALUE 36,640,100

TOTAL PRESENT WORTH VALUE 4,424,772

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2. U.S. v. Truckee River General Electric, No. 14,861 E.D. California. (Suit to acquire title to Tahoe Dam, which includes injunctive provisions as to required lake levels and releases). No. S-643-LKK (N.D. Cal., 1915).

3. U.S. v. Alpine Land and Reservoir Co. No. D-183, D. Nev. Originally filed in 1925. United States v. Alpine Land and Reservoir Company, 503 F. Supp. 877 (D. Nev. 1980), affirmed as modified, 697 F. 2d 851 (9th Cir. 1983), cert. denied, 464 U.S. 863. (Decree establishing water rights for Carson River).

TABLE 2

OPERATION AND MAINTENANCE CHARGES

	Based on Acres Actually Irrigated		Based on Water Righted Acres	
	Bench	Bottom	Bench	Bottom
	60,000		73,840	
Acreage	10,000	50,000	11,168	62,672
Charge	23.90	25.50	23.90	25.50
Total Cost	$239,000	$1,275,000	$266,915	$1,598,136
	$1,514,000		$1,865,051	
Difference	$351,051			

This is an increase of 21 percent.

It is important to understand that the District has already exceeded it payment capacity by approximately $2.43 per acre. Subsequently the District assumed a repayment obligation for emergency work of $24,000 annually and a repayment obligation for Safety of Dams work on Lake Tahoe Dam. Based on the above, without the additional repayment obligations included, charging by the acres actually irrigated will increase the irrigator's cost an additional $5.85 per acre.

TABLE 3

TRUCKEE CARSON IRRIGATION DISTRICT LANDOWNERSHIPS

Parcel Size	Ownership Number	 Percent	Water Right Acres Acres	 Percent
Less than 5	2,936	70.2	3,054	4.2
05-09 acres	272	6.5	1,827	2.5
10-20 acres	208	5.0	2,905	4.0
20-39 acres	310	7.4	9,182	12.5
40-99 acres	323	7.7	21,167	28.9
100-199 acres	88	2.1	11,834	16.2
200 acres or greater	48	1.1	23,243	31.7
	4,185	100.0	73,212	100.0

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

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Memorandum

To: Secretary

From: Solicitor

Subject: Authority to Provide Water to Stillwater Wildlife Management Area

This responds to your inquiry concerning the authority of the Secretary to acquire water rights for fish and wildlife purposes and transport the water through Bureau of Reclamation (Reclamation) facilities within the Newlands and Washoe Reclamation Projects (Project) to Stillwater Wildlife Management Area (Stillwater). Your inquiry relates to a proposal by the Nevada Waterfowl Association to donate water rights to the U. S. Fish and Wildlife Service (Fish and Wildlife Service) for use on Stillwater.[1] In addition, the Appropriations Act for Fiscal Year 1989 requires the Fish and Wildlife Service to acquire water rights for use at Stillwater. Pub. L. No. 100-446, 102 Stat. 1778 (1988).

Two specific questions are raised by the proposal and the legislation: (1) does the Secretary, through the Fish and Wildlife Service, have authority to acquire Project water rights and use them for fish and wildlife purposes at Stillwater; and, (2) if the answer to the first question is in the affirmative, does the Secretary, through the Bureau of Reclamation, have authority to transport water so acquired through Project facilities to Stillwater. We conclude that the Secretary does have ample authority to acquire Project water rights for fish and wildlife purposes at Stillwater and to transport water so acquired through Project facilities to Stillwater.

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[1] An application has been made to the Nevada State Engineer to transfer those rights to the U.S. Fish and Wildlife Service and the Nevada Department of Wildlife. The application identifies the Fish and Wildlife Service and the Nevada Department of Wildlife as the applicant, although the Fish and Wildlife Service has not been asked to join in the application. The Department of the Interior has petitioned the State Engineer to intervene in the proceeding as an unaligned party. The State Engineer has not yet ruled on this petition. For the purposes of this memorandum, we have assumed that if the Fish and Wildlife Service acquires an interest in water rights, it will acquire an undivided interest in those rights.

BACKGROUND

At the time of creation of the Newlands Reclamation Project,[2] the Secretary of the Interior's only enabling legislation with regard to the construction of reclamation projects consisted of the 1902 Reclamation Act (Reclamation Act). Act of June 17, 1902, 32 Stat. 388. That act has been since supplemented and amended numerous times. The Reclamation Act did not authorize any particular project, but, rather, generally authorized the Secretary to undertake reclamation efforts. In response to that authority, the Secretary directed the Geological Survey to initiate the Newlands Project only a few days after enactment of the Reclamation Act. The Newlands Project proposal is set forth in a memorandum from the Director of the Geological Survey to the Secretary dated March 7, 1903. United States Department of the Interior, Bureau of Reclamation Project Feasibilities and Authorizations, 10-11, 14-15 (1957).

As initially conceived, the Newlands Project would have irrigated 140,000 acres of land, with a second phase adding approximately 100,000 acres. Id. The lands withdrawn and reserved totaled 232,800 acres. U.S. Department of the Interior, Operating Criteria and Procedures for the Newlands Project, Record of Decision 2 (April 15, 1988) ("OCAP ROD"). The Omnibus Adjustment Act of May 25, 1926, reduced the size of the Newlands Project by approximately 97,000 acres.

The Newlands Project receives water from two rivers, the Truckee and the Carson. The water rights for those rivers were adjudicated in United States v. Orr Water Ditch Co., Equity A-3 (D. Nev., 1944) (Orr Ditch); and United States v. Alpine Land and Reservoir Co., 503 F. Supp. 877 (D. Nev. 1980), aff'd, 697 F.2d 851 (9th Cir. 1983) (Alpine). The decrees do not apportion water rights to particular parcels of land; rather, the decrees recognize that the Secretary holds legal title to the block of water rights, under which the Department provides irrigation water to up to 232,800 acres of land. Orr Ditch at 10; Alpine, 503 F. Supp. at 879. The Secretary contracted with individual project farmers for delivery of water from the Newlands Project until signing an operations contract with the Truckee Carson Irrigation District (TCID) in 1926.[3] After this contract was signed, TCID contracted directly with project farmers for delivery of water to them. These individual contracts identify water rights to particular parcels of land within the Project.

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[2] Until 1915 the Newlands Project was known as the Truckee Project.

[3] The Act of May 15, 1922, 42 Stat. 542, authorizes the Secretary of the Interior to enter into repayment contracts with irrigation districts, which are public corporations incorporated under state law to distribute and administer water. Contracts
(footnote continued)

An agreement among TCID, the Nevada State Board of Fish and Game Commissioners (currently Nevada Department of Wildlife), and the Fish and Wildlife Service established Stillwater Wildlife Management Area in November 1948 (Attachment A) on Newlands Project withdrawn lands. The so-called "tri-party agreement" established the management area for a 50-year term, which will terminate in 1998, unless renewed. The agreement provides that the management area is to be administered by the Fish and Wildlife Service, but Stillwater continues as Reclamation withdrawn lands.[4/] Memorandum from Acting Associate Solicitor, Conservation and Wildlife Division, to Assistant Secretary for Fish, Wildlife and Parks, dated August 17, 1973, regarding Stillwater Wildlife Management Area, Bureau of Sport Fisheries and Wildlife (Attachment B). The land included in Stillwater serves as a drainage area for the Project and as habitat for waterfowl, migratory birds and bald eagles.

In 1956, Congress authorized another project in the same area as the Newlands Project. The Washoe Project (Washoe) supplemented and became integrated with the existing Newlands Project. 70 Stat. 775-76, 43 U.S.C. § 614; see also, H.R. Doc. No. 184, 84th Cong. 1st Sess. 3 (1955). Although the Washoe Project made water available to additional lands, the area designated to receive benefits from the Washoe Project includes all of the areas designated to receive water from the Newlands Project. H.R. Doc. No. 184, supra at 1. The Washoe Project was designed to develop water supplies to meet additional water needs in the area of the Newlands Project by conserving excess runoff in project reservoirs, and by saving water previously lost to evaporation and transpiration. In addition, Congress authorized the Washoe Project for fish and wildlife purposes. 70 Stat. 775, 43 U.S.C. § 614.

(footnote continued from previous page)
with irrigation districts may replace, in the discretion of the Secretary, contracts with individual landowners and entrymen. 43 U.S.C. § 511.

[4/] A portion of Stillwater was set aside as Fallon National Wildlife Refuge in Exec. Order No. 5606 (1931). Creation of the Fallon National Wildlife Refuge changed the legal status of those lands. Fallon National Wildlife Refuge lands have been removed from the Newlands Project, and are reserved for another purpose. By contrast, the Stillwater Wildlife Management Area, which includes that area administratively designated by the Fish and Wildlife Service as Stillwater National Wildlife Refuge, remains project lands.

Operation of the Newlands Project has raised many issues that have led to considerable litigation. Two areas of contention have been how to efficiently manage project water and who owns the water rights. Competition for water from the Project is keen. Water diverted to the users in TCID does not reach Pyramid Lake, home to the cui-ui, an endangered species, and the Lahontan cutthroat trout, a threatened species, and the Pyramid Lake Paiute Tribe of Indians (Tribe). Conversely, water flowing to Pyramid Lake does not reach TCID, the Fallon Indians and Stillwater. In order to meet all of its obligations, the Department focused on efforts to make the use of the Project's water more efficient by promulgating operating criteria and procedures for the project.

The Department adopted regulations setting out operating criteria and procedures for the Newlands Project in 1967. These were challenged in Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D.D.C. 1973). The court in Morton examined the Department's management regulations in light of the three major factors that the court maintained should control Secretarial action at the Newlands Project: (1) the Secretary's contract with the irrigation district, (2) applicable court decrees, and (3) trust responsibilities to the Pyramid Lake Tribe. The court found the operating criteria and procedures then in effect to be defective and set out its own criteria and procedures, which it ordered the Secretary to adopt.

In 1973, in an attempt to properly allocate Project water, the United States instituted a suit against all users of Truckee River water, asserting that the Orr Ditch decree determined only the reservation Indians' rights to irrigation water, and claiming an additional reserved right for water to maintain and preserve Pyramid Lake and maintain the lower Truckee as a natural spawning ground. In Nevada v. United States, 463 U.S. 110 (1983), the Supreme Court held that res judicata barred the United States from asserting this claim. Further, the court held that reallocating Project water to the reservation would not be merely an internal shift by the United States of its own water because the beneficial interest in the government's water right for the reclamation project resided in the owners of the land irrigated by the project. Therefore, the Court placed substantial restrictions on the ability of the United States to meet its obligations by reallocating Project water:

> [W]e conclude that the government is completely mistaken if it believes that the water rights confirmed to it by the Orr Ditch decree in 1944 were like so many bushels of wheat, to be bartered, sold or shifted about as the Government might see fit. Once these lands were acquired by settlers in the Project, the Government's "ownership" of the water rights was at most nominal; the beneficial interest in the rights confirmed to the Government resided in the owners of the land within the

> Project to which these water rights became appurtenant upon the application of Project water to the land.

463 U.S. at 126 (1983).

With this limitation as background, the Ninth Circuit in TCID v. Secretary of Interior, 742 F.2d 527 (9th Cir. 1984), reaffirmed the authority of the Department to establish operating criteria for TCID. See also Orr Ditch, supra. Following the decision in TCID v. Secretary of Interior, supra, Interior annually promulgated interim operating criteria and procedures from 1985 until 1987. After undertaking a comprehensive review, with public participation and comment, on April 15, 1988, the Secretary issued, subject to court approval, the final operating criteria and procedures (OCAP) to govern use of Federal facilities for delivery of irrigation water.[5] The stated objective of the promulgation was to "ensure that maximum use is made of the Carson River and minimum use of the Truckee River for deliveries to meet decreed entitlements, in conformance with instructions from the Nevada Federal District Court." OCAP ROD at 3. By requiring water conservation measures and providing incentives and disincentives to TCID and water users to use water more efficiently, the Department intends through OCAP to supply the project with water to meet all valid water rights, and to do so in a manner that will comply with applicable court decrees; fulfill the federal trust responsibility to the Pyramid Lake and Fallon Tribes; meet the requirements of the Endangered Species Act; and provide a "framework for local decisionmaking which can contribute to the protection of wetlands, recreation, economic and other regional values." OCAP at 3.

The OCAP are designed to reduce the amount of water diverted from the Truckee River to TCID, in order to increase flows to Pyramid Lake for the benefit of the Tribe and endangered species, while meeting obligations to deliver water to all holders of valid water rights. The water conservation measures and incentives and disincentives are designed to result in expected irrigation diversions from the Truckee River ranging from 343,855 acre-feet in 1988 to 320,485 acre-feet in 1992. OCAP at 27. Although approximately 73,800 water-righted acres could be irrigated in the Project (OCAP at 27), the OCAP rely upon an assumption that less acreage will in fact be irrigated than the full water-righted total; the actually irrigated acreage estimates range from 61,630 in 1988 to 64,850 in 1992. OCAP at 28, Table 1 and related discussion. As the Record of Decision states, "OCAP are predicated on water being used on water-righted land in a manner similar to past operations. Compliance with OCAP will be measured based on facts which can be readily determined by the District and the Bureau." OCAP ROD at 3.

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[5] The final OCAP have been filed with the United States District Court for the District of Nevada in Pyramid Lake Paiute Tribe v. Lujan, Civil No. CV-R-85-197-BRT, and, are pending before the court for approval. The final OCAP have not been published in the Federal Register.

Water conserved under OCAP would eventually reach both the Indian tribes and the endangered species without depriving the water users of their water rights. Water conserved through efficiency at the Project would not be diverted out of the Truckee River and would flow into Pyramid Lake. Water at Pyramid Lake benefits the Pyramid Lake Paiute Tribe, the Lahontan cutthroat trout and the cui-ui.

One direct consequence of the OCAP, however, will be to reduce drainage of excess irrigation water to Stillwater. Absent another source of water for Stillwater, this reduced drainage will result in a loss of wetlands, and an attendant drop in wildlife areas. The OCAP do not attempt to mitigate this impact because the area possesses no primary water rights for wildlife use. Instead, Stillwater receives Project runoff under an appropriative right and uses the water for wildlife purposes. Nev. State Eng. Permits Nos. 13345-51 (Oct. 26, 1987). Therefore, Stillwater has no right to rely on the continued availability of waste water from the Project. See Bowers v. Big Horn Canal Assoc., 77 Wyo. 80, 307 P.2d 593 (1957).

In an effort to mitigate potential wetlands losses at Stillwater as a result of OCAP, both public and private assistance measures are being undertaken. Congress, through Pub. L. No. 100-446, directed the Fish and Wildlife Service to expend $1.2 million to lease or purchase water rights, subject to certain requirements, for the benefit of Stillwater:

> [O]f the funds provided to the United States Fish and Wildlife Service under the heading "Construction and Anadromous Fish in Public Law 100-71, $1,200,000 shall be expended for the lease or purchase of water rights, from willing sellers, for the benefit of Stillwater Management Area, Nevada: [Provided] That the lease or purchase shall be carried out pursuant to this appropriation if and only if the Secretary receives certification from the State of Nevada that the transfer of water rights and associated change of use for the beneficial use of Stillwater Management Area is approved by the State of Nevada.

102 Stat. 1778. Private organizations are also making efforts to acquire water rights for donation to the management area.

DISCUSSION

A. Authority of the Secretary to Acquire Water Rights for Fish and Wildlife Purposes at Stillwater

The question of authority to acquire Project water rights for use for fish and wildlife purposes at Stillwater must be answered in two parts. First, does the Secretary have authority generally under federal law to acquire water rights for fish and wildlife purposes? Second, does the Secretary have authority to use this Project water for fish and wildlife purposes at Stillwater? We believe the answer to both of these questions is in the affirmative.

1. Authority under Federal Law

Ample federal statutory authority exists to support any decision the Secretary of the Interior may make to acquire water rights for Stillwater. See e.g., Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq.; National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd (acquisition of interests with donated funds); Migratory Bird Conservation Act, 16 U.S.C. § 715d; Fish and Wildlife Improvement Act of 1978, 16 U.S.C. § 742f(a)(4); Endangered Species Act (ESA), 16 U.S.C. § 1534.

In addition to those statutes, the Secretary must also take into consideration trust obligations to Indian tribes and the requirements of the Endangered Species Act before proceeding. It is our judgment that these requirements can be satisfied if the proposed acquisitions are consistent with the OCAP for the Project.

a. Trust Responsibilities

Any proposed water rights transfers must be consistent with the Secretary's fiduciary duty to the Pyramid Lake Paiute and Fallon Tribes.[6] The primary question in the consideration of whether a proposed acquisition is consistent with that duty is whether the acquisition will adversely affect the operation of the OCAP. Consistency with the OCAP is of primary importance because the effectiveness of the OCAP in improving the efficiency of water deliveries to irrigation will permit water not needed for irrigation to go to Pyramid Lake for the benefit of tribal fisheries and endangered species, and to the Fallon Reservation.

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[6] The Fallon Paiute Tribe differs from the Pyramid Lake Tribe in that the Fallon Indian Reservation is within the Project. In 1978, Congress enacted Pub. L. No. 95-337, 92 Stat. 455 (1978), charging the Secretary with the responsibility of developing irrigation on the Fallon Reservation. Accordingly, the water budget for OCAP includes present and projected irrigation needs of the Fallon Reservation. As long as the subject transfers will be consistent with that budget, they will not affect performance of the Secretary's duty to that Tribe.

In Pyramid Lake Paiute Tribe of Indians v. Morton, supra, the Pyramid Lake Tribe challenged transfers that would deliver more water to TCID than required by applicable court decrees and statutes. In agreeing with the Tribe, Judge Gesell stated that the water to go to Pyramid Lake was "all water not obligated by court decree or contract with the District." 354 F. Supp. at 256 (emphasis added). The Secretary was directed to develop operating criteria and procedures that would protect the Tribe's interest in minimizing diversions from the Truckee River and from Pyramid Lake. It is assumed that the water rights now proposed for transfer are those obligated by decree or contract. Further, from the available facts, there is no indication that the currently proposed transfers would otherwise violate Judge Gesell's judgment and order in Morton or operate against the effectiveness of the OCAP subsequently developed by the Department or the incentives on which the OCAP relies.

In summary, and as a general proposition, Morton itself does not appear to preclude the proposed transfers. Known facts do not indicate that the current proposal would increase consumptive use or cause greater diversions from the Truckee River in violation of the OCAP and the Secretary's trust responsibilities. However, before approving or accepting any specific acquisition of water rights or transportation of water, there should be confirmation that the proposed transfers will not impair the Department's ability to achieve the diversion objectives of the OCAP.[7]

b. The Endangered Species Act

On November 24, 1987, the Fish and Wildlife Service issued an extensive biological opinion on a number of proposed, alternative long-term operating criteria for the Newlands Project. See Memorandum from Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon, to Regional Director, Bureau of Reclamation, Mid-Pacific Region, Sacramento, California, re Formal Section 7 Consultation for Reinitiation of Newlands Project Long-Term Operating Criteria and Procedures (File No. 1-5-86-F-81R) (Nov. 24, 1987) (November 1987 Biological Opinion).

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[7] Delivery of water to Stillwater will involve conveyance losses, and Reclamation must consider whether a transfer of the full water allotment to Stillwater will lessen the district's efficiency in delivery and use of water under the OCAP. If federal action results in or contributes to diversions beyond that predicted from historical data and included in the OCAP water budget, the result will tend to defeat efforts by TCID and the farmers to minimize overall diversions, will detract from the rewards which TCID and the farmers can seek under the OCAP incentive system, and could even result in penalties being imposed on these parties under the OCAP. Such a result could bear on the sustainability of the OCAP now filed with the Nevada Federal District Court. One of the objections to the OCAP filed by TCID was that the OCAP could lead to TCID and the farmers being penalized for matters over which they have no control.

That opinion concluded that the implementation of the preferred alternative in the Final Environmental Impact Statement (FEIS), which involved a total allowable diversion of 320,000 acre-feet over a 5-year phase-in period, is not likely to jeopardize the continued existence of the cui-ui or the bald eagle. See November 1987 Biological Opinion at 3.[8]

Later, after further fine-tuning of the long-term OCAP as a result of the post-FEIS public review and comment process, the Fish and Wildlife Service examined the revised OCAP, and, in an updated biological opinion, issued on April 14, 1988,[9] concluded that they continued to meet the requirements of section 7(a)(2) of the ESA. We conclude that there is nothing to prevent the Department from again relying upon this biological opinion, assuming that the water rights being considered for acquisition and transportation are consistent with the OCAP water budget and that there is no new data that would require further analysis.

We also conclude that the proposed acquisition of water rights for the Stillwater wetlands would not violate the Secretary's general responsibility to conserve the cui-ui or the Lahontan cutthroat trout under section 7(a)(1) of the ESA. In fact it is important to note that the Department is not ignoring its conservation responsibilities for the cui-ui and the cutthroat trout. The Department is pursuing the conservation of these species by devoting the entire conservation yield of Stampede Reservoir for the benefit of these fish. Carson-Truckee Water Conservancy District v. Clark, 741 F.2d 257 (9th Cir. 1984), cert. denied, 470 U.S. 1083 (1985). Such discretionary action on the part of the Department satisfies the requirements of section 7(a)(1).

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[8] The Fish and Wildlife Service's biological opinion also addressed whether the Department must reduce diversions of water from the Truckee River to avoid the impairment of cui-ui spawning activity and, therefore, avoid the alleged unlawful "taking" of the endangered fish. See 16 U.S.C. § 1538(a). The Fish and Wildlife Service examined the issue of whether cui-ui might be taken incidental to the implementation of the proposed long-term OCAP and concluded that no incidental taking would be anticipated. See November 1987 Biological Opinion at 17.

[9] The biological opinions issued by the Fish and Wildlife Service under section 7 of the ESA are entitled to great deference by reviewing courts. See e.g., Roosevelt Campobello International Park Commission v. United States Environmental Protection Agency, 684 F.2d 1041 (1st Cir. 1982); H.R. Conf. Rep. No. 697, 96th Cong., 1st Sess. 12 (1979) (legislative history to the ESA Amendments of 1979). As noted in Village of False Pass v. Watt, 565 F. Supp. 1123 (D. Alaska 1983), aff'd, 733 F.2d 605 (9th Cir. 1984), "The biological opinion is accorded substantial weight as evidence of [the agency's] compliance with the Endangered Species Act." 565 F. Supp. at 1160. The Department relied upon the biological opinion of the Fish and Wildlife Service in determining that its long-term OCAP satisfied the requirements of section 7(a)(2) of the ESA.

We therefore conclude that the Secretary possesses ample authority under federal law to acquire water rights for fish and wildlife purposes for use at Stillwater.

2. Authority to Use Project Water

While there is ample authority for the Secretary to acquire water rights for fish and wildlife purposes under federal law, we must still address the question of whether Project water in particular can be used for fish and wildlife purposes. Section 8 of the Reclamation Act of 1902 requires that "the Secretary of the Interior, in carrying out the provisions of [the Reclamation Act] shall proceed in conformity with [state laws relating to the control, appropriation, use, or distribution of water used in irrigation]." 43 U.S.C. §§ 372, 383; Nevada v. United States, supra; United States v. Alpine Land and Reservoir Co., 697 F.2d 851 (9th Cir. 1983).

In California v. United States, 438 U.S. 645 (1978), the Supreme Court held that Section 8 "requires the Secretary to comply with state law in the 'control, appropriation, use, or distribution of water.'" Id. at 675. The Court proceeded to find that the Secretary should "follow state law in all respects not directly inconsistent with [federal statutory] directives." Id. at 678.

a. The Orr Ditch and Alpine Decrees

The decrees resulting from the original general stream adjudications constitute the initial determination of the Project's rights under state law. The Orr Ditch decree provides that the Newlands Project water from the Truckee River may be used for:

> [T]he irrigation of 232,800 acres of lands on the Newlands Project, for storage in the Lahontan Reservoir, for generating power, for supplying the inhabitants of cities and towns on the project and for domestic and other purposes and under such control, disposal and regulation as the [Secretary] may make or desire, provided that the amount of this water allowed or used for irrigation shall not exceed, after transportation loss and when applied to the land, 3.5 acre feet per acre for the bottom lands, nor 4.5 acre feet per acre for the bench lands under the Newlands Project. (Emphasis added.)

Orr Ditch at 10. Thus, under Orr Ditch, the Secretary would appear to have broad discretion with respect to changes in the place or type of use of Project water, subject to state procedural authority.

The Alpine decree does not specify to what uses the water rights may be put. The Alpine court, however, emphasized that "the United States . . . is required to conform to applicable Nevada law with respect to changing the place of diversion or place of use." 503 F. Supp. at 884.[10]

b. Nevada Statutory Provisions

While the Orr Ditch decree would appear to give the Secretary broad discretion with respect to changes in the use of Project water under state law, we must examine further the state provisions applicable to changes in beneficial ownership and use. The proposed transfer of a water right from the Nevada Waterfowl Association, and the proposed acquisition of water rights under Pub. L. No. 100-446, would result in conveyances of beneficial ownership of water rights from irrigators to the Fish and Wildlife Service. In addition to the change of beneficial ownership, the transactions would change the use of the water from irrigation to wildlife.[11]

For water rights acquired under Pub. L. No. 100-446, the Act provides that the Secretary may not proceed with water rights acquisitions until the State of Nevada certifies that the transfer and change of beneficial use has been approved by the State of Nevada. 102 Stat. 1778.[12] This requirement is consistent with the holding in Alpine requiring the United States to follow Nevada law in water transfers. On appeal in United States v. Alpine, the Ninth Circuit addressed whether the United States must follow Nevada law with respect to water rights transfers and changes of use for Newlands. The Ninth Circuit affirmed the trial court's decision that the United States had properly acquired water rights for the Project from private parties:

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[10] Alpine did not address whether the United States must comply with Nevada procedures for a change in the type of use to which the water would be put. However, this conclusion is implicit from the discussion of the Alpine court. 503 F. Supp. at 884.

[11] It is unclear whether the proposed transaction would constitute a change of place of use under state law because the state general stream adjudications did not identify the water rights to individual parcels of land within the project and the only such identification derives from actions taken by or on behalf of the Department of the Interior. The State Engineer has processed several previous applications for change of location of use within the Newlands Project. The United States has not challenged his jurisdiction to do so since the Alpine decision.

[12] Pub. L. No. 100-446 provides:

> That the lease or purchase shall be carried out pursuant to the statutory and procedural requirements of the laws of the State of Nevada, and the Secretary shall proceed with any such lease or purchase pursuant to this appropriation if and

(footnote continued)

> We agree with the district judge that "the conspicuous absence of transfer procedures, taken in conjunction with the clear general deference to state water law impels the conclusion that Congress intended transfers to be subject to state water law." [Citation omitted.]

697 F.2d at 858.[13] Ultimately, then, the State Engineer's decision constitutes the determination of consistency with state law.

The Nevada procedure for an application for a change of beneficial use or place of use is specified in Nev. Rev. Stat. § 533.345 (1986). Procedures and standards for approval of the application are found at Nev. Rev. Stat. § 533.370 (1986). The standards for approval of a change of type of use would be virtually identical to the standards for a change in the place of

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> only if the Secretary receives certification from the State of Nevada that the transfer of water rights and associated change of use for the beneficial use of Stillwater Wildlife Management Area is approved by the State of Nevada.

102 Stat. 1778. Because the Appropriation Act requires Nevada's certification that any particular transfer is approved, contracts for the purchase or lease of water rights acquired with funds under Pub. L. No. 100-446 should be made contingent on the approval of the transfer application by the Nevada State Engineer.

[13] It has been argued that the Ninth Circuit opinion suggests that the court believed that the Secretary has no authority to review the merits of a proposed transfer within the Project, and no opportunity to protect federal interests in the Project, except before the State Engineer. See 697 F.2d at 858. Indeed, the Supreme Court held in California v. United States, 438 U.S. 645 (1978), that state law will control the distribution of water rights to the extent that there is no preempting federal directive. 438 U.S. at 678. However, under California v. United States, the United States retains authority to review proposed transfers to ensure that no federal directive preempts the proposed state action.

use.[14] Two separate sections, sections 1 and 3, provide guidance to the State Engineer in reviewing a change of use application. Section 1 reads in pertinent part:

> [T]he state engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if: . . .
>
> (b) The proposed use or change, if within an irrigation district, does not adversely affect the cost of water for other holders of water rights in the district or lessen the district's efficiency in its delivery or use of water.

Nev. Rev. Stat. § 533.370(1) (1986). This section provides three considerations important to the current situation: (1) that the new use of the water be a recognized beneficial use; (2) that the change does not adversely affect the remaining users' irrigation costs;[15] and (3) that the change does not lessen the district's efficiency in delivery or use of water.

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[14] Provisions under both state and federal law address changes in the place of use of a water right. Nev. Rev. Stat. § 533.040 provides:

> All water used in this state for beneficial purposes shall remain appurtenant to the place of use; provided:
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> 1. That if for any reason it should at any time become impractical to use water beneficially or economically at the place to which it is appurtenant, the right may be severed from such place of use and simultaneously transferred and become appurtenant to other place or places or use . . . without losing priority of right. . . .
> 2. That the provisions of this section shall not apply in cases of ditch or canal companies which have appropriated water for diversion and transmission to the lands of private persons at an annual charge.

Nev. Rev. Stat. § 533.040 (1986). Thus, the ability to sever the water right from the appurtenant land under Nevada law will depend on determinations made by the Nevada State Engineer with respect to the question of whether it is impractical or uneconomical to use water at the place to which it is appurtenant.

A separate provision appears in section 8 of the Reclamation Act of 1902, which provides that "the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated. . . ." 43 U.S.C. §§ 372, 383. However, because the water rights to be transferred here will continue to serve and become appurtenant to Project lands, as specified in the Orr Ditch and Alpine decrees, we believe that the provisions of section 8 will not preclude the use of water at Stillwater.

For many years, Nevada law did not specify whether the use of water for wildlife purposes constituted a beneficial use. Recently, in the Nevada Supreme Court case, Nevada v. Morros, 104 Nev.___, 766 P.2d 263 (1988), the court recognized use of water for wildlife purposes as a beneficial use.

With respect to the cost of water and the district's efficiency in its delivery or use of water, Nevada law provides no guidance.[16] There is no case law guiding these provisions; these are factual determinations committed to the State Engineer.

Section 533.370(3) provides additional criteria under which the applications will be reviewed:

> [W]here [the transferee's] proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the permit asked for.

Nev. Rev. Stat. § 533.370(3) (1986). Therefore, the State Engineer must reject a transfer application if it harms existing appropriators or is "detrimental to the public interest." The public interest is nowhere defined, and research has not disclosed a reported Nevada case providing further guidance. However, Nevada v. Morros, supra, and the various federal laws favoring protection of wildlife provide support for the proposition that the proposed transaction is not inconsistent with the public interest.

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[15] TCID has argued in the past that this provision precludes the State Engineer from approving a proposed transfer of water from Project to non-Project lands that would affect the cost of water for other holders of water rights in the district or lessen the district's efficiency in its delivery or use of water. In re Medlock, et al., Bankruptcy, Case No. 87-149 (July 17, 1987). We assume here that Project water will be transferred only to Project lands. We leave for another day the issue of the validity of transfers to non-project lands.

[16] We will not address the question of the proper allocation of costs generated by a change of use or place of use until specific proposals concerning those allocations are made. We note only that some writers suggest that any use of project conveyance facilities should avoid the imposition of additional costs on users intended by Congress to be the primary beneficiaries of project water. See B. Driver, "The Effect of Reclamation Law on Voluntary Water Transfers," 33 Rocky Mt. Min. L. Inst. § 26.04[7] (1988); R. Roos-Collins, "Voluntary Conveyance of the Right to Receive a Water Supply from the United States Bureau of Reclamation," 13 Ecology L.Q. 773, 817 (1987).

The question of harm to other appropriators remains to be determined as a factual matter by the State Engineer. Under the law of most western states, the right to change beneficial use or place of use may not be approved if it would harm other appropriators. See generally, Farmer's Highline Canal & Reservoir Co. v. City of Golden, 129 Colo. 575, 272 P.2d 629 (1954). Appropriators normally have vested rights in the continuation of stream conditions as they existed at the time of their respective appropriations. Id. Subsequent to such appropriations, they may successfully resist all proposed changes in points of diversion and use of water that in any way materially injure or adversely affect their rights. Id. In approving the proposed change of use of water, the State Engineer must ensure that no other appropriator's rights will be adversely affected.

Therefore, State law contains no legal bar to the acquisition by the Secretary of Project water rights for use at Stillwater for fish and wildlife purposes. However, uncertainty will remain until the State Engineer makes the factual determinations necessary for approval of a transfer or a change of use.

B. Authority of the Secretary to Use Project Facilities to Transport Water to Stillwater for Fish and Wildlife Purposes

Once water rights are acquired, the water must be transported to Stillwater.[17] Because the Project provides the only existing delivery system for that water, Project facilities must be used if delivery of the water is to be timely and cost effective. Thus, the second question we address is the Secretary's authority to use Project facilities to transport acquired water to Stillwater for fish and wildlife purposes.

The question of authority to use Project facilities differs from the question of the use of the Project water rights. While the courts have been firm in holding that the United States must comply with state law in its use of water, they have consistently reaffirmed the proposition that the United States retains ownership of and an interest in management of project facilities. In California v. United States, the Court quoted from Nebraska v. Wyoming, 325 U.S. 589 (1945), and Ickes v. Fox, 300 U.S. 82 (1937): "[T]he water-rights became the property of the land owners, wholly distinct from the property right of the government in the irrigation works." 438 U.S. at 677. In Nebraska v. Wyoming, the Court also noted that the United States retains a distinct "property right in the reservoirs, ditches or canals." 325 U.S. at 614.

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[17] Any consideration of environmental and trust responsibilities necessary for the use of federal facilities for the proposed transfers will be subsumed within the consideration of those responsibilities with respect to the acquisition and application of water rights. We need not address whether such federal responsibilities would be triggered if water rights acquired by some other party were to be transported through federal facilities. Further, because Stillwater lies within the Project, we have not examined whether the use of Project facilities to deliver water outside Project boundaries would be permissible.

In Pyramid Lake Paiute Tribe v. Morton, supra, the court recognized that the Secretary retains responsibility for the management of the Newlands Project even though beneficial ownership of the Project water lies with the landowners. Further, in TCID v. Secretary, supra, the Ninth Circuit affirmed the authority of the United States to terminate a water contract in order to assert management control over the Project. Given these considerations, the use of Project facilities to accomplish a proposed transaction must be reviewed for consistency with federal law.

Federal law requires that the Department, through the Bureau of Reclamation, operate its water projects in a manner consistent with the projects' legislative authorities and in a manner consistent with any feasibility reports submitted to Congress at the time of the projects' authorizations. 85 I.D. 326 (July 31, 1978). However, when the project report and legislation authorizing the project are unclear, the Secretary has broad discretion to use the facilities or even modify the features of a project so long as those modifications are consistent with the legislative descriptions of the project. 85 I.D. 337 (May 1, 1978).

Because the Newlands Project was not authorized under a specific project authorization act, there was no statement of Congressional intent with regard to the specific purposes for the Newlands Project. The Reclamation Act neither expressly prohibits nor authorizes the use of project water rights or facilities for fish and wildlife purposes, although the legislative history of the Act makes clear that Congress had an irrigation focus for reclamation projects at that time.[18] The focus of the 1902 Act should not be read as perpetual, however, because later enactments have supplemented the authority of the Act.

Congress implicitly recognized fish and wildlife uses for the Newlands Project facilities when it authorized the Washoe Project in 1956. The authorized purposes for Washoe include supplementation of the water supply available to the Newlands Project and fish and wildlife purposes. 43 U.S.C. § 614. In fact, the Washoe legislation expressly provides funding for fish and wildlife purposes. 43 U.S.C. § 614c.

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[18] The project feasibility report, like the legislative history, discusses the feasibility of the project only for irrigation and domestic uses. Bureau of Reclamation Project Feasibilities and Authorizations 10-11, 14-15 (1957).

As discussed above, the project area for Washoe includes the entire Newlands Project. H.R. Doc. No. 184, supra, at 1. Further, the legislative history of the Washoe legislation reflects Congress' intent that the Newlands and Washoe Projects be fully integrated. The "Plan of Development" portion of the Feasibility Report on the Washoe Project outlined the relationship between the Washoe and Newlands Projects:

> The Washoe project would be integrated with the existing Truckee River storage and Newlands projects . . . . The Washoe project would increase irrigation supplies . . . by an average of 72,000 acre-feet annually. . . . In addition, during dry cycles, [The Washoe Project] would firm the existing supplies for . . . the Newlands project.

Id. at 3. Further, the feasibility study for Washoe contemplated that Lahontan Reservoir and other key facilities of the Newlands Project would be integrated with the new Washoe facilities in order to achieve the goals of the Washoe Project, including the fish and wildlife protective purposes. Id. at 3.

The Washoe Project legislative history also reflects Congress' intent that Washoe facilities be used to provide fish and wildlife benefits specifically at Stillwater. H.R. Doc. No. 184, supra, at 15, 30, 79 and 143. In the Feasibility Report's discussion of fish and animal life, it is recognized that "the Stillwater wildlife management area offers protection to thousands of birds attracted each year to the Carson Sink area." Id. at 15. In addition, in a letter to the House Chairman commenting on the Washoe Project, the Secretary emphasized his responsibilities within Washoe for protecting fish and wildlife resources:

> Moreover, the project area contains significant waterfowl habitat. The Federal Government has responsibilities for the welfare of migratory waterfowl under statutes enacted pursuant to international treaties with Great Britain and Mexico designed to provide for the welfare of these species. We therefore feel that provisions for development of fish and wildlife resources of the project area . . . is appropriate. . . .

Letter from Assistant Secretary of Interior, Fred G. Aandahl, to Clair Engle, Chairman, House Committee on Interior and Insular Affairs, March 27, 1956, reprinted in S. Rep. No. 1829, 84th Cong. 2d. Sess. 17 (1956).

Washoe specifically added drains to carry water already transported through Newlands Project facilities into the management area. Therefore, Congress recognized that Newlands Project facilities would transport water to Stillwater and, thus, implicitly modified the authorization of the Newlands Project to include fish and wildlife purposes. Moreover, provision was specifically made for "adaptation[s] [of Washoe] as are justified . . . to best protect and enhance fish and wildlife values." H.R. Doc. No. 184, supra at 7. Pursuant to this ability to adapt the project plan for wildlife purposes, the Bureau of Reclamation proposed construction of facilities to improve the water supply for waterfowl habitat at Stillwater. U.S. Department of the Interior, Water and Power Resources Service Project Data 1291 (1981). Proposals included enlarging the capacity of Stillwater Point Reservoir and construction of a Paiute Reservoir supply canal to take Newlands Project drain water to Paiute Reservoir. Id.

The Washoe legislation, then, is reasonably interpreted to provide general authority to use Newlands Project facilities for fish and wildlife purposes. Two further acts supplement that authority by providing additional tools for you to meet those purposes. Section 14 of the Reclamation Project Act of 1939 provides further authority to the Secretary to meet the fish and wildlife purposes of Washoe:

> The Secretary is further authorized, for the purpose of orderly and economical construction or operation and maintenance of any project, to enter into such contracts for exchange or replacement of water, water rights, or electric energy, or for the adjustment of water rights, as in his judgment are necessary and in the interests of the United States and the project.

43 U.S.C. § 389 (emphasis added). Thus, in order to ensure orderly operation and maintenance of a project and to meet the needs of a project, the Secretary may by contract adjust, exchange, or replace project water rights. This statute, then, would appear to provide the Secretary with the flexibility to adjust water rights by changing their place of use in order to meet the fish and wildlife purposes of the Washoe Project.

As we have discussed, the OCAP for the Newlands Project will reduce the drainage water available to Stillwater and may even render its appropriative right to waste water worthless. If the Secretary undertakes to mitigate such effects, we believe the Secretary may do so by means of a contract to replace or otherwise adjust water rights at Stillwater under section 14. Congress recognized that such adjustments might be necessary. In the Feasibility Report for Washoe, incorporated in the legislative history of its authorizing act, the following discussion of water rights appears:

> In order that the most economical use of the water for the entire project area may be effected, agreements would be required with the users of both Truckee and Carson River waters for modification of certain established water rights and for exchanges of water among the various users.

H.R. Doc. 184, supra at 7.

Section 14 has been used as a tool to mitigate adverse effects of projects in the past. In one instance, the Secretary "adjusted" water rights adversely affected by a project, by purchasing water rights outright. Dec. Comp. Gen. B-84264. In another, the Secretary replaced a water supply diverted by project operations by agreeing to supply water from the project. Memorandum from Associate Solicitor, Division of Water and Power, July 27, 1959.

In addition, a contract for the adjustment, replacement, or exchange of water rights would promote the interests of the United States, because Stillwater furthers several interests of the United States. The policy of the United States favors the protection of wetlands. Exec. Order No. 11990, 42 Fed. Reg. 26,961 (1977). Further, treaties with the Union of Soviet Socialist Republics and Japan and United States Statutes supportive thereof favor the protection of migratory bird habitats. Treaty with U.S.S.R., art. IV(1), T.I.A.S. No. 9073 (Nov. 19, 1976); Treaty with Japan, art. VI, 25 U.S.T. 3329, T.I.A.S. No. 7990 (Mar. 4, 1972); Migratory Bird Treaty Act, 16 U.S.C. §§ 703-708, 709a-711; Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668d; National Wildlife Refuge System Administration Act, supra.

In addition to the 1939 Act, the Water Project Recreation Act of 1965, 16 U.S.C. § 460l-18(a), provides the Secretary with additional authority to meet the fish and wildlife purposes of the Washoe Project. This act permits the Secretary:

> in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges to investigate, plan, construct, operate and maintain, or otherwise provide for . . . fish and wildlife enhancement facilities, to acquire or otherwise make available such adjacent lands or interests therein as are necessary for . . . fish and wildlife use and to provide for public enjoyment of project lands, facilities and water areas in a manner coordinated with the other project purposes: Provided, That not more than $100,000 shall be available to carry out the provisions of this subsection at any one reservoir.

16 U.S.C. § 460l-18(a) (emphasis added). Stillwater constitutes a fish and wildlife enhancement area; its primary purpose is to provide habitat for waterfowl. It also provides a hunting area, an area of project lands set aside for public enjoyment. As such, this provision would permit the Secretary to operate and maintain existing Project facilities for wildlife purposes, or to acquire other interests for wildlife purposes. One limitation on such use is that these purposes must be coordinated with other Project purposes; another is that costs must be limited to $100,000 per reservoir. The cost limitation would not present a problem in this instance, however, because ~~no~~ new facilities would be necessary.

Our conclusion, then, is that the Secretary has sufficient authority to transport water to Stillwater for fish and wildlife purposes based upon the Washoe Project authorization, the Reclamation Project Act of 1939 and the Water Project Recreation Act.[19/]

CONCLUSION

We conclude that the Secretary has sufficient authority to acquire water rights for fish and wildlife purposes and to transport the water for use at Stillwater Wildlife Management Area. This legal conclusion assumes that such acquisition and transportation is consistent with OCAP and does not interfere with the primary Project purpose of providing water for irrigation. In addition, the proposed use of the water at Stillwater must be reviewed by the Nevada State Engineer, and he must approve it prior to completion of the transaction and delivery of the water.

Ralph W. Tarr

Ralph W. Tarr

Attachments

[19/] An argument could be made that the 1989 Appropriations Act, Pub. L. No. 100-446, which directs the Secretary, through the Fish and Wildlife Service, to acquire water rights for Stillwater supports our conclusion. Because the Act provides no authority for construction of delivery facilities, and no alternate method of delivery exists, and because the Act requires that the water be put to beneficial use in accordance with Nevada law, a reasonable inference may be drawn that Congress intended to authorize the Secretary to use Newlands Project facilities for the delivery of water to Stillwater. Sierra Club v. Andrus, 610 F.2d 581, 601 (9th Cir. 1979), rev'd on other grounds, 451 U.S. 287 (1981).

Questions for Assistant Secretary Harriman:

Question 1: Will implementation of OCAP alone ensure the recovery of cui-ui?

Answer: No. The Fish and Wildlife Service issued a Biological Opinion that the long-term OCAP proposed by the Secretary in 1988 is not likely to jeopardize the continued existence of cui-ui if the expected annual diversion is reduced to 320,000 acre-feet by 1992. This opinion did not address recovery, which is a process through which the decline of the species is reversed and threats to its survival are neutralized so that its long-term survival in nature can be ensured. The goal is maintenance of a secure, self-sustaining wild population with the minimum necessary investment of resources. A Biological Opinion only addresses the impact of the project in question on the continued survival of the species.

The 1983 Cui-ui Recovery Plan defines recovery as the restoration and maintenance of a self-sustaining population in the Truckee River/Pyramid Lake ecosystem. An adequate water supply must be secured in order to accomplish this goal. The adequacy of the water supply depends upon the amount of water storage dedicated to cui-ui, diversions from the river, and the timing and amount of runoff, in combination with the status of species, access to spawning habitat, and the condition of spawning habitat.

The OCAP is expected to provide a part of that water supply. The Bureau of Reclamation Stampede Reservoir currently provides another important supply--especially at critical times in the processes leading to successful spawning and survival of juvenile cui-ui. The Fish and Wildlife Service and its cooperators are currently working on an updated and more detailed recovery plan.

Question 1(b): What measures in addition, if any, are required to increase cui-ui populations to the point that the species may be de-listed under the Endangered Species Act?

Answer: Significant advancements in the restoration of cui-ui have been made in the last fifteen years. These include: (1) allocation of Stampede Reservoir storage to threatened and endangered fishes of Pyramid Lake, (2) implementation of Operating Procedures and Criteria for the Newlands Project by the Secretary in 1988, (3) construction of Marble Bluff Fish Facility, and (4) completion of portions of the cui-ui life history study. Though the Fish and Wildlife Service has made advancements in implementing the 1983 Cui-ui Recovery Plan, the continued existence of the species is far from assured.

To assure recovery of the species: (1) upstream passage to spawning habitat must be unrestricted during most years; (2) spawning habitat in the lower river must be improved; (3) instream flow must be sufficient to attract spawners to the river, provide suitable spawning and incubation conditions, and provide sufficient outmigration flows for adults and larvae; and (4) suitable water quality must be maintained in Pyramid Lake.

Depending upon the success of improving delta passage and rehabilitating the lower river, and the availability of future river flows, additional water may be required to restore the species.

The Cui-ui Recovery Team has been re-formed to address these concerns in a detailed revision of the species recovery plan. This revised plan is tentatively due in early 1991.

Question 2: Do any of the revenues generated from grazing on Stillwater Wildlife Management Area lands accrue to the benefit of the Fish and Wildlife Service?

Answer: No. Grazing is not used as a wildlife management tool on the Stillwater Wildlife Management Area (SWMA), but instead is used as a source of revenue for the operation of the Truckee-Carson Irrigation District, under terms of the 1948 Tri-Party Agreement.

Question 3(a): Do you think that it is good policy for wildlife refuges or public wetlands to have to rely on agricultural drainage as their source of water?

Answer: No. However, agricultural drainage is often the only water available. Such supplies may be appropriate if quality and quantity parameters are acceptable.

Question 3(b): Can you describe a better policy for provision of refuge water supplies?

Answer: Yes. National Wildlife Refuges should be provided with adequate water rights and supplies. On the Newlands Project, which has no unappropriated federal water rights, we are left with no choice but to purchase a sufficient amount of water to maintain the Lahontan Valley Wetlands.

Question 4: Please describe the status of migratory waterfowl populations using the Lahontan Valley wetland while travelling the Pacific Flyway.

Answer: The North American Waterfowl Management Plan recognizes the Lahontan Valley wetlands as an area of importance. Historically, migratory waterfowl were attracted to the Lahontan Valley wetlands because of their location in the Pacific Flyway, their diversity of high quality habitats, and an abundance of key aquatic forage plants. Peak fall populations of several important species illustrate the value of Lahontan Valley wetlands to migratory birds. Up to 75% of the Pacific Flyway populations of northern shovelers, 54% of canvasbacks, 50% of ruddy ducks, and 41% of green-winged teal utilize the Lahontan Valley wetlands through the fall and winter. Gadwall (46,000) and redhead (26,900) numbers reflect fall peak counts when compared to wintering population surveys on the Pacific Flyway. These numbers reflect 84% and 100%, respectively, of the Pacific Flyway population.

Waterfowl population using the Lahontan Valley wetlands are showing a downward trend due to loss of foraging and nesting habitats. American white pelicans, which nest on Anaho Island in Pyramid Lake but forage in the Lahontan Valley wetlands, are showing a major downward population trend due to the loss of habitat. In 1987, 6,000 young were produced at Anaho Island NWR. In 1989, the number produced was down to 300.

Question 5: The Bureau of Reclamation shut down a drainage system in the San Luis Unit of the Central Valley Project when it became clear that the drainage was damaging fish and waterfowl at Kesterson National Wildlife Refuge. In part, the Bureau acted out of concern that it might be in violation of the Migratory Bird Treaty. Isn't the Department facing a similar problem here, and shouldn't our response be the same?

Answer: The situation is similar in that water from two drains (Hunter and T.J.) were found during a 1988 study to cause mortality to aquatic test organisms. Other water sources, which have a mix of drain and fresh water, were not found to be toxic. The Department believes that we are not in violation of the Migratory Bird Treaty Act. We are actively trying to resolve the situation through our water right purchase program and the Department is also examining drainage toxicity on the project. This could lead to shutting down or modifying the drains.

Question 6: Please describe any measures in addition to water right acquisitions that would benefit the Lahontan Valley wetlands. Would the wetlands benefit by transfer of plenary jurisdiction to the Fish and Wildlife Service? Reduced grazing? Could the Navy be helpful in any respect?

Answer: Measures in addition to water rights acquisition that would benefit the Lahontan Valley wetlands follow:

> Stop all flows now reaching the wetlands on the SWMA via the T.J and Hunter Drains. Both drains have been found to be extremely toxic, even at 50% dilution levels. The T.J. Drain, while contributing less than 1% of the water entering the management area, contributes 15% of the salt loading.
>
> Identify those lands within the Newlands Project which are contributing the most contaminants to the drains and target those lands for retirement. Develop a prime water delivery system in addition to the drain water system now in operation.
>
> Modify the 1926 BOR and TCID (on which the 1948 Tri-party Agreement is based) operating contract to exclude the wetland areas.
>
> Transfer ownership of the Stillwater Wildlife Management Area and the Carson Lake Pasture to the Service and the State,

respectively, as their primary purpose is wildlife management rather than agriculture.

Transfer of complete jurdiction to the Fish and Wildlife Service would benefit wetlands. Decisions would be based primarily on wildlife benefits. Any revenue would be shared with the county government, not with the irrigation district. It would also free up management responsibility on areas that the Service has little migratory bird or cultural resource responsibility.

Reduced grazing? Answer: Grazing modifications should insure that any grazing which was allowed would be a management, not a revenue objective.

The Navy could help by transferring Carson River water rights not needed for Foreign Object Damage (FOD) to the wetlands, and leaving those associated with the Truckee River in that river to benefit listed fishes of Pyramid Lake.

Question 7: Do you believe that any portions of section 402 of S. 1554, which provide for Truckee River and Pyramid Lake fishery restoration, require any measures inconsistent with the Endangered Species Act? Some critics of the section have complained that it creates "super-endangered species status" for the cui-ui. Do you agree?

Answer: We do not believe there is anything in Section 402 of S. 1554 that is inconsistent with the Endangered Species Act. The comment about "super-endangered species" seems to be directed toward that portion of the bill that requires that a recovery plan be written within one year of enactment of the bill and that implementation begin within six months thereafter. We do not agree that this creates an unusual situation or status because it is common for Congress to enact legislation directed toward a specific species, such as legislation for the bald eagle, sea otter, Coachella Vally fringe-toed lizard, and the black-footed ferret.

Question 8: Have any studies been undertaken to determine whether Valley wetland water requirements might be met in part through development of groundwater resources? If so, please identify studies and their conclusions.

Answer: Several detailed studies have been conducted on the Stillwater Management Area to determine the suitability and availability of underground resources as a source of water for marsh maintenance.

In 1977, three irrigation wells were drilled on the Stillwater Wildlife Refuge by the Department of Fish and Game. These wells were approximately 700 feet deep. Salinity readings were recorded regularly at the discharge pipe. Additionally, soil samples were taken in discharge areas pre and post application of the well water. Salinity readings ranged from 4,507-8,667 ppm and concentrations of minerals were higher than recommended for agricultural purposes.

The USGS (Morgan 1977) conducted another detailed hydrologic study to test the feasibility of using geothermal resources for marsh maintenance. The water quality and quantity were tested at six wells (50-500' deep). The results of water analysis from these wells have shown high concentrations of salts, calcium, sodium, bicarbonate, sulfate, chloride and boron which are detrimental to plant growth. These studies indicate the quality of groundwater resources is not adequate for discharge of these waters into the marsh system to support a viable wetland vegetative community.

Question 9: Does the Department have an opinion on whether Reno-Sparks' sewage effluent could be used to create artificial wetland areas offering benefits to migratory waterfowl? If so, does the Department have an opinion on where such wetlands should be established?

Answer: Yes. The Department believes that Reno-Sparks sewage effluent could be put to beneficial use maintaining artificial or established wetlands in support of migratory birds. The U.S. Environmental Protection Agency has concluded that this is a feasible project. There are concerns with loading rates, wetland development costs, contingency plans, monitoring, mobilization of salts and potentially toxic trace elements and replacement flow in the Truckee River which must be addressed.

Furthermore, since treated sewage effluent is currently returned to the Truckee River, the use of the effluent elsewhere would create a significant replacement flow issue. Absent provisions for replacement flows, the use of this effluent to create wetlands could further reduce flows into Pyramid Lake.

Additionally, the wetlands should not be created to the detriment of existing wetlands such as might occur if water rights were purchased in the Lahontan Valley and then exchanged for effluent. The Department would prefer that wastewater wetlands be established in the Truckee River basin since prior interbasin diversion has resulted in adverse impacts to fish and wildlife habitats in both the Truckee and interconnected Carson River basin.

The Department believes that removal of Reno-Sparks wastewater from the Truckee River is being seriously considered in response to a series of water quality standards violations. Beneficial uses associated with these standards include threatened, endangered and game fish in the Truckee River and Pyramid Lake.

Questions and Answers for Assistant Secretary Brown

1. Question Does a map exist showing precisely the lands exchanged by the Fallon Paiute-Shoshone Tribe in 1906? If so, please provide a copy of it.

   Answer The Bureau of Indian Affairs will need to develop such a map. We will provide you a copy as soon as it becomes available.

2. Question Do you believe that the Fallon Paiute-Shoshone Tribe has unquantified reserved water rights on the Carson River?

   Answer No. The United States filed for water rights for the Fallon Tribe under the Carson River adjudication in Nevada; the Alpine Decree. Under that decree, the Tribe's water right was quantified under the water appropriation laws of the State of Nevada. It was determined that the Tribe would acquire a superior water right under the Alpine Decree rather than quantifying its water rights pursuant to the Federal reserved doctrine. It is the position of the Department of the Interior that, pursuant to the doctrine of Res Judicata, the Tribe's water right has been determined.

3. Question Given the Fallon Paiute-Shoshone Tribe's historical reliance on Lahotan Valley wetlands for food and shelter, do you think the Tribe may have a claim to water for maintenance of some or all of the wetlands?

   Answer No. Please refer to the preceding answer.

PETER G. MORROS, Director

Address Reply To:
Capitol Complex
123 W. Nye Lane
Carson City, Nevada 89710
Telephone (702) 687-4360

BOB MILLER
Governor

STATE OF NEVADA

DIVISIONS
Conservation Districts
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Department of Conservation and Natural Resources
OFFICE OF THE DIRECTOR
CARSON CITY, NEVADA 89710

April 25, 1990

Senator Bill Bradley, Chairman
Subcommittee on Water and Power
United States Senate
Senate Hart Office Building
Washington, DC 20510-6150

Dear Senator Bradley:

This will acknowledge receipt of your letter of March 26, 1990, regarding S. 1554, the "Truckee-Carson Pyramid Lake Water Rights Settlement Act". You posed several questions in your letter related to use of water in the Newlands Project. The following are the responses to the questions in the same order that they were presented:

1. QUESTION

Have waters used in the transportation of water diverted for irrigation within the Newlands Reclamation Project, and lost through evaporation, seepage or spills, been applied to a beneficial use within the meaning of Nevada law? If so, what entity holds the right to such waters?

ANSWER

Nevada law and the Alpine and Orr Ditch Decrees recognize reasonable transportation losses as an inherent part of the water right and the beneficial use associated with that right. (See NRS 533.070.) Assuming that the diversion is reasonable for transportation and for meeting the duty under the circumstances existing at the time of the diversion then incidental evaporation, seepage and spills are permissable under Nevada law. The right to the transportation water belongs to the individual water right owners within the project.

2. QUESTION

If waters used in the transportation of water for irrigation in the Newlands Reclamation Project, and otherwise lost through evaporation, seepage or spills, can be saved by conservation measures, what entity has a right to these "saved" waters? Does it matter to the result whether the conservation measures are undertaken by (and paid for) the United States Government, Truckee-Carson Irrigation District, or individual water users? What priority will the "saved" waters have?

ANSWER

The savings would be available to first satisfy all water rights under the decrees and any excess water would belong to the public and be subject to the appropriation procedures under state law. Any savings by conservation methods would not create a water right for anyone. If an individual user conserves water he could benefit individually up to meeting this decreed duty. The waters necessary to fully satisfy decreed duties maintain their decreed priority. Any excess waters appropriated would have junior priorities in accordance with the Nevada water law.

3. QUESTION

If the right to the "saved" waters is not held by the United States, can the right be transferred to the United States? Who must authorize the transfer and on what standards will authorization be based?

ANSWER

If such water is surplus to decreed rights, it must be appropriated under Nevada water law. The United States, like any other appropriator, could establish a water right if it meets all state law requirements. (NRS 533.010.) If the "saved" water is required to meet decreed rights, a water right owner could transfer the water right to the United States pursuant to the change requirements of state law. Nevada law change statute requires that there be no conflict with other existing rights and that the change not be detrimental to the public interest. NRS 533.345, 533.370.

4. QUESTION

If the "saved" waters are not transferred, are they retained by the water users, Truckee-Carson Irrigation District or the United States?

ANSWER

"Saved" waters in excess of decreed rights belong to the public subject to appropriation under Nevada water law.

5. QUESTION

If the "saved" waters are retained by, transferred to or otherwise held by the United States, would Nevada law permit that water to be used by the United States to benefit fish and wildlife in the Lahontan Valley wetlands, Truckee River or at Pyramid Lake?

ANSWER

Yes, subject to existing rights and subject to a finding by the State Engineer that the transfer would not prove detrimental to the public interest.

6. QUESTION

If the Newlands Project is reauthorized by the Congress to include among its purposes municipal, industrial and domestic service, will Nevada law permit Newlands Project water right holders now using that water for irrigation to change their use to municipal, industrial and domestic purposes? What effect, it any, will such change of use have on priorities or other features of the original water right?

ANSWER

Nevada water law does not require a reauthorization by Congress to qualify for a change in manner of use. Nevada law allows a change of manner of use pursuant to NRS 533.345 and 533.370. Approval of any change would be subject to a finding by the State Engineer that there is no conflict with existing rights and that the change does not threaten to prove detrimental to the public interest. In the case of a change within an irrigation district, approval would be subject to a finding by the State Engineer that the proposed change does not adversely affect the cost of water for other holders of water rights in the district or lessen the district's efficiency in its delivery or use of water. Any change would retain the priority of the original water right.

7. QUESTION

If the Newlands Project is reauthorized by the Congress to include among its purposes muinicipal, industrial and domestic service, will Nevada law permit the United States to supply Newlands Project water for municipal, industrial and domestic purposes within the Newlands Project service area, assuming net diversions from the Truckee and Carson Rivers are not increased?

ANSWER

Nevada water law does not require a reauthorization by Congress to qualify for a change in manner of use. Nevada water law would not prohibit the United States from supplying municipal, industrial and domestic water within the Newlands Project provided that the necessary water rights were acquired and the Nevada statutory procedures were satisfied.

8. QUESTION

Would Nevada law permit an individual or entity holding an irrigation water right within the Newlands Project area to lease, rent, or otherwise convey on a temporary basis that right to another individual or entity in the Newlands Project area for the purpose of irrigation?

ANSWER

Yes, provided that a permit is obtained pursuant to NRS 533.345 and 533.370. A temporary change may be granted for any period not to exceed one year if procedures set forth in NRS 533.345(2)(3)(4) are followed. Changes for a term exceeding one year can be pursued under NRS 533.345(1) and 533.370.

9. QUESTION

Would Nevada law permit an individual or entity holding an irrigation water right within the Newlands Project area to lease, rent, or otherwise convey on a temporary basis that right to another individual or entity in the Newlands Project area for the purpose of benefiting fish and wildlife? If so, will the priority or any other feature of the original right be affected?

ANSWER

Yes, provided that a permit is obtained pursuant to NRS 533.345 and 533.370. A temporary change may be granted for any period not to exceed one year if procedures set forth in NRS 533.345(2)(3)(4) are followed. Changes for a term exceeding one year can be pursued under NRS 533.345(1) and 533.370. "Wildlife purposes" is a recognized beneficial use in Nevada. NRS 533.023. Priority will not be affected, and the water right may be affected by the terms and conditions of the change permit.

10. QUESTION

Would Nevada law permit operation of a "water banking" system utilizing Lahontan Reservoir storage capacity in a manner similar to the "water banks" used in the Snake River basin in Idaho (documentation attached)?

ANSWER

There is no "water banking" terminology in Nevada water law so there is a reluctance to make comparisons with the laws of other states.

We would appreciate additional information on this question. An example or examples of factual situations where the "banking" concept might be considered in Nevada would assist us in addressing Nevada law provisions as they may apply to the concept.

In addition, during testimony presented on S. 1554, there was a question directed to the State of Nevada relating to the financial participation of Nevada in the overall settlement. I would like to take this opportunity to respond to that inquiry. There is a continuing authorization of eight million dollars as set forth in the statutes of Nevada (1987), Chapter 478, Page 1269, as amended by statutes of Nevada (1989), Chapter 785, Page 1866, "Advance Sheets". These funds represent the State of Nevada's share of costs associated with the implementation of a settlement.

In 1989 the Nevada Legislature passed the above referred to Chapter 785, authorizing an additional five million dollars for purchase of water rights and associated interests in land or property for the protection of habitat for fish and game. These funds would be used for Stillwater and Lahontan Valley Wetlands acquisition of water rights and interests of land and water appurtenant thereto. These funds will require the approval of the Nevada electorate in November of 1990 on a bond issue.

I hope I have adequately responded to your inquiries and would like to express my appreciation for being allowed the opportunity to address the matters and concerns set forth in your letter. We continue to be confident that the Negotiated Settlement process will be successful.

Sincerely,

Morros

Peter G. Morros
Director

PGM/bc

APPENDIX II

Additional Material Submitted for the Record

TESTIMONY OF
ASSISTANT SECRETARY
JOHN SAYRE
WATER AND SCIENCE
U.S. DEPARTMENT OF INTERIOR

BEFORE THE SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
FEBRUARY 6, 1990

Mr. Chairman, on behalf of my colleagues, Assistant Secretaries Harriman and Brown, as well as myself, I want to thank the Subcommittee for this opportunity to present the Department of the Interior's views on S. 1554, the "Truckee-Carson Pyramid Lake Water Rights Settlement Act." With the Chairman's permission, I will begin our presentation with an overview of the Administration's position and its major concerns with S. 1554. I will then outline some more specific concerns related to the Bureau of Reclamation's operations within the Truckee and Carson River basins. Assistant Secretaries Harriman and Brown will then address, respectively, the specific concerns of the Fish and Wildlife Service and the Bureau of Indian Affairs.

Mr. Chairman, the Administration cannot support the bill unless major concerns are addressed. Among these concerns are:

- o The bill fails to achieve finality, including the allocation of water in the Truckee River.
- o It establishes a $75 million trust fund that is totally unjustified by any risk of legal liability the United States and is inconsistent with this Administration's policy on settling Indian water rights disputes.

- o Consideration of all environmental affects is not ensured and an Environmental Impact Statement will be necessary.
- o S. 1554 lacks provisions for non-Federal cost sharing in connection with the acquisition of water for wetlands and other environmental purposes.
- o The bill imposes substantial hidden costs on the Federal Government including modification of Truckee River diversion facilities, operation and maintenance costs, endangered species restoration and recovery, an alternative dust abatement program for Fallon Naval Air Station, and commitments to the Fallon Tribe.

These water issues are complex and have been the subject of litigation since the early 1900's. There have been numerous lawsuits which have been costly to the United States and other public and private entities.

This Committee has previously held hearings in an effort to resolve these long-standing disputes. In 1985, Senators Laxalt and Hecht introduced S. 1558, which attempted to resolve the conflicts between the various entities. That bill was the culmination of many years of negotiations between the parties. Hearings were held before the Subcommittee on Public Lands, Reserved Water and Resource Conservation, on Monday, October 21, 1985, and the hearing record was published as Senate Hearing 99-312. However, that bill failed to pass because of continuing disagreements. Senators Laxalt and Hecht then introduced S. 2457 on May 15, 1986. This bill had a more limited scope and would have ratified the interstate allocation of water between

California and Nevada as passed by the two State legislatures in 1970 and 1971, respectively. This interstate allocation was also a part of the comprehensive settlement bill (S. 1558) mentioned earlier. S. 2457 also failed to pass, again leaving the issues unresolved.

In 1987 a new round of negotiations began, designed to bring together the principal parties involved in the disputes. With Senator Reid's urging, the States of California and Nevada, the Pyramid Lake Tribe, the Sierra Pacific Power Company, and the Truckee-Carson Irrigation District began negotiations. These negotiations proceeded sometimes without participation by all the parties. Although the parties were again unable to reach agreement on many issues, the bill you now have before you is the result of the efforts of some of the parties over the last two plus years.

These efforts constitute an important step, and we fully agree that the issues on the Truckee and Carson Rivers must be resolved. Negotiation provides an opportunity to resolve these issues without continuing even more expensive litigation.

The bill does contain a number of important concepts which the Department can endorse.

The Department generally supports the interstate allocation of water between Nevada and California as agreed upon by those two States. There are, however, several modifications we would recommend to this section of the bill.

We also support the concept of using the reservoirs on the Truckee and Carson Rivers to maximize conservation and promote better use of available water as provided in this title.

An acceptable operating agreement for the water resources in this part of Nevada is a valuable contribution. This bill, in Title II, proposes a beginning towards such an agreement.

The Department also commends the recognition in the bill, in Titles III and IV, of the importance of the fish and wildlife resources in this area. These resources deserve our best efforts at protection.

At the same time, the Department believes that several provisions of S. 1554 can be improved to better resolve disputes over the area's water resources. We believe that a number of outstanding concerns could be resolved with appropriate amendments. We would also recommend the inclusion of provisions to ensure that these disputes are resolved in an environmentally responsible fashion.

However, one of the major problems with the bill is that it does not adequately address a number of the issues needing resolution on these two rivers. This bill is being presented as the resolution to litigation and confrontation over the water in these river systems, and yet, Section 601 of the bill requires the settlement of only five ongoing lawsuits.

Passage of the bill in its present form will restrict the Secretary's ability to negotiate the agreements required by the bill as well as other agreements needed to resolve issues with other parties. The bill reduces the number of options available to the Secretary, such as the use of available storage in Reclamation Reservoirs, when negotiating these agreements. The

Department will be pleased to work with all parties to determine if acceptable language can be drafted to finally settle these issues.

The Department is also concerned that the bill could usurp State primacy in water right matters; for example, by requiring the interbasin transfer of water from the Fallon Naval Air Station to Pyramid Lake. The bill may also allocate water to the Pyramid Lake Tribe without benefit of State water law processes.

We believe that it is important to maintain the principle of State primacy in administering water laws within their respective States. Bill language is needed to deal with this issue.

The focus of the Department's efforts to resolve many important issues has been the Newlands Project Operating Criteria and Procedures (OCAP). A final Environmental Impact Statement on the OCAP was issued in April of 1988. If these issues are reopened settlement prospects could be dimmed. It is important that the enactment of this bill not adversely affect these OCAP. Therefore, we suggest that specific language be included in the bill to ensure that the OCAP, and the environmental and policy concerns upon which they are based, are protected. Moreover, the bill must provide for the preparation of an Environmental Impact Statement by the Secretary examining the effects of all changes in water operations authorized by the bill, and allowing the Secretary to recommend appropriate non-Federally cost shared modifications or mitigation measures prior to the implementation of the changes.

The Department recognizes that the bill contains language intended to protect existing water rights. But implementing other provisions of the bill may result in settled water rights issues, including the Orr Ditch and Alpine water rights decrees and the OCAP, being reopened.

Since this bill requires the Secretary to take certain actions which may significantly affect the operation of two river systems and a variety of natural resources, the bill should contain authorizing language to complete an Environmental Impact Statement for the operating agreement set forth in Title II and its implementation. The operating agreement could have a number of environmental implications, and we urge that the Committee add such a section to the bill.

Recent preliminary studies have found high levels of contaminants in drains coming from the Newlands Project lands, particularly the T-J drain which serves the Fallon Indian Reservation lands. We believe that this contaminant problem needs to be addressed in this legislation.

As stated earlier, we support the concept of a new operating agreement. However, we have serious concerns regarding the terms and conditions of the Preliminary Settlement Agreement. For example, the Agreement as now negotiated could hamper the Department's ability to comply with the Endangered Species Act by delegating to a non-Federal entity control over water needed to sustain these species. This provision could result in the Federal Government being held liable for damages as a result of private decisions about water storage.

We also are concerned that this operating agreement for the Truckee River may not address the interests of the entities operating storage facilities on the river system.

The Department supports the provisions of the bill which provide for purchase of water rights for the wetlands but requests that changes in the language be made to allow a modification of the eligibility criteria to permit flexibility in acquiring these rights. The amounts authorized to be appropriated may be inadequate to achieve the results contemplated. These costs should be shared as appropriate without the Federal taxpayer assuming the entire burden.

The bill before you provides for a significant transfer of Newlands Project water rights from irrigation lands to wetlands. In addition, there is a growing concern over the levels of arsenic in the ground water supply for residential use in the City of Fallon and surrounding areas. Because of the water right transfers to the wetlands proposed by this bill and the change of land use from agricultural to municipal and industrial use, the Department recommends that the Newlands Project be reauthorized to include fish and wildlife and municipal and industrial purposes as authorized project uses.

The bill requires the use of Stampede Reservoir for presently unauthorized purposes. Language should be included in this bill that will authorize the reallocation of construction as well as operation and maintenance costs for the non-reimbursable functions.

The Department opposes the provision authorizing a $75 million development fund for the Pyramid Lake Tribe. Title V of S. 1554 provides for the authorization within the Treasury of a $75,000,000 Tribal Trust Fund for the Pyramid Lake Paiute Tribe.

That figure was not established through settlement talks with the Department and cannot be justified by any risk of legal liability to the United States and is inconsistent with this Administration's policy on settling Indian water rights disputes. In addition to direct costs, such as the authorization for a trust fund, the bill imposes a number of substantial hidden costs on the Federal Government. Examples of such costs include: Truckee River Fishery rehabilitation recovery plans, costs for replacement water, various operation and storage charges, and possible replacement costs for lost hydropower.

In summary, Mr. Chairman, the Department believes that this bill, although a start, should be both modified and expanded. The Department will be pleased to work with the Subcommittee to draft amendments to make this truly a settlement bill. Without such modifications, however, the Department must oppose S. 1554.

Now Mr. Chairman, I would like to be more specific with respect to certain sections of the bill which are of special concern to my office.

The bill requires that water rights be transferred from the Fallon Naval Air Station to the Pyramid Lake Indian Reservation. This transfer may be physically impossible using project facilities and conflicts with the objective of wetlands protection.

The bill provides for the negotiation of an agreement determining permanent rights to store water in Stampede and Prosser Reservoir for the benefit of the Tribe and the Pyramid Lake Fishery. We recommend this section be amended to provide for storage of water for fish and wildlife purposes in Stampede Reservoir until such storage is no longer needed for preservation of the endangered cui-ui or threatened Lahontan cutthroat trout. Some of this storage might then be available for much-needed municipal and industrial purposes.

To accomplish the purposes of the bill, additional language should be included that would provide (1) for the storage of non-project water in Federal facilities for M&I purposes and (2) that the nonproject water has priority over Washoe Project water supplies in Stampede Reservoir. No such authority currently exists because the Warren Act (36 Stat.925) provides for the storage of nonproject water in Federal facilities only for irrigation purposes.

By letter dated December 15, 1989, the Subcommittee requested a comprehensive report on the Newlands Project's financial status. That information has been provided in part, and we expect to have the remaining information within 30 days.

Mr. Chairman, this is a list of basic issues and certainly is not exhaustive. There are other concerns relating to the bill that have not been specifically addressed here, such as appropriate cost-sharing, and involvement of all affected parties.

Again, Mr. Chairman, we thank you for this opportunity to appear today, and we commend this effort to achieve a long overdue resolution to the many difficult issues surrounding the Truckee and Carson Rivers.

STATEMENT OF CONSTANCE HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON WATER AND POWER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 1554, THE TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT

February 6, 1990

Mr. Chairman and members of the subcommittee, I am pleased to be here today to present our views on S. 1554 -- the Truckee-Carson-Pyramid Lake Water Rights Settlement Act.

The Administration cannot support this legislation unless numerous concerns are addressed. We do, however, support the goals of S. 1554. We defer to John Sayre's statement for the specifics of the Administration's position. With amendments, the bill would provide the Secretary with welcome new authorities, in addition to his existing authorities, to conserve Pyramid Lake fishes and restore critical wetlands at the Stillwater National Wildlife Refuge.

We recommend amendments to address the following concerns:

o Under section 201 of the bill, we do not know what impacts the Preliminary Settlement Agreement and its related Operating Agreement would have on the recovery of Pyramid Lake fishes. In order to comply with his responsibilities under the Endangered Species Act, the Secretary should have the ability to disapprove either agreement if it is detrimental to these fishes.

- Funds are authorized under section 301 to purchase water rights for wetlands. We estimate that it would take between 50,000 to 60,000 acre-feet to maintain wetlands. In addition, we believe that the bill should provide the Secretary with adequate flexibility in determining appropriate acquisitions pursuant to this authority.

- If lands currently managed for wildlife benefits are withdrawn from the Newlands Project and transferred to the National Wildlife Refuge system, they may not be eligible to receive Project water. Therefore, in section 302, the authority to deliver Project water through the Project's delivery system to the refuge should be affirmed.

- No funding would be authorized under the draft to implement the required recovery plans for listed fishes of Pyramid Lake. Section 402 should be amended to authorize funding to implement recovery tasks. If any tribal development funds are authorized under Title V, a portion of them should be allocated for recovery tasks. In addition, the Secretary's water rights purchase authority should be expanded to include recovery of Pyramid Lake fish resources.

- Under section 601, we are concerned that implementation of unfulfilled obligations to the Fallon Tribe may adversely impact Threatened and Endangered fishes of Pyramid Lake. We affirm the Tribe's rights to water entitlements, but recommend that any expansion of irrigated lands on the Fallon Reservation not exceed the projected target suggested by the Secretary in his 1988 Record of Decision for the Newlands Project's Operating Criteria and Procedures.

- Subsection 602(b) provides: "The Tribe shall have sole and exclusive right to regulate all hunting and fishing on all lands, including the bed and banks of the Truckee River and Pyramid Lake, within the boundaries of the Pyramid Lake Indian Reservation." This might eliminate Anahoe Island National Wildlife Refuge, an island located in the middle of a lake. The bill should be amended to clarify that the refuge would not be included within the lands over which jurisdiction is given to the reservation.

Mr. Chairman, there is another issue which is not addressed but would be affected if S. 1554 is enacted and, therefore, needs to be recognized up-front: Contaminated agricultural drain water from the T-J drain enters the Stillwater Wildlife Management Area from the Fallon Indian Reservation. We believe this problem should be addressed by this legislation.

Although we affirm the integrity of current Operating Criteria and Procedures (OCAP) for the Newlands Project, the bill should recognize that subsequent to Secretarial approval of the Preliminary Settlement Agreement and Operating Agreement, and other storage and diversion approvals, OCAP and its impacts may have ~~to be~~ re-evaluated.

Several issues remain unresolved in sections 101, 102, and 103 of S. 1554, and we would be pleased to work with the other agencies and the Subcommittee to address these outstanding concerns, including the need to:

- confirm existing diversions from the Carson River in excess of the Alpine Decree; and
- prevent increasing diversions from the Truckee River that would adversely affect listed fishes of Pyramid Lake and wetlands in Lahontan Valley.

Several of the potential, hidden costs to the U.S. Fish and Wildlife Service are:

- Cui-ui recovery -- There is no provision in the bill for probable recovery costs, including: a) Delta passage ($10 million), rehabilitation of the lower river ($30 million), and c) purchase of water rights ($30-50 million).
- Hydropower -- This bill would eliminate power that was allocated to Lahontan National Fish Hatchery, but which it has never received, and the projected cost is $180,000 annually.

- T-J Drain -- The cost of closing or modifying the Drain would be considerable, but minimal compared to the loss of healthy wetlands, wildlife, and migratory birds.

- Property damage -- The preliminary settlement agreement mentions the storing of fish-credit water in Lake Tahoe, which could increase wave action damage to private property along the lake, due to higher water levels.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to answer any questions you may have.

STATEMENT OF EDDIE F. BROWN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON WATER AND POWER OF THE SENATE COMMITTEE ON ENERGY AND RESOURCES, UNITED STATES SENATE, ON S. 1554, THE TRUCKEE-CARSON- PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT.

February 6, 1990

Mr. Chairman and members of the Subcommittee, I am pleased to be here this morning to set out my views as Assistant Secretary - Indian Affairs on S. 1554, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act.

The Administration cannot support S. 1554 unless major concerns are addressed. We defer to the statement of Mr. John Sayre, Assistant Secretary for Water and Science for the specifics of the Administration's position. However, we support the goal of S. 1554.

Mr. Chairman, I recognize that S. 1554 reflects a major effort on the part of many of the local parties in conjunction with Senator Reid and his staff, and the members and staff of this Subcommittee. Several of these local parties, which have a long history of being at odds with one another, have now finally been able to join together in a cooperative effort for the good of the Truckee, Carson area as a whole. It is an effort worthy of our support. I hope that before this legislative process is over, a bill will emerge that fully addresses the Department of the Interior's (DOI) trust responsibilities to the Indian tribes affected by this legislation, the Pyramid Lake Paiute Tribe and the Fallon Paiute-Shoshone Tribe.

I would like to discuss at least two issues regarding the Pyramid Lake and Fallon Tribes. First, it is not sufficiently clear that the provisions of S. 1554 are compatible with the Department's Operating Criteria and Procedures (OCAP) for the Newlands Reclamation Project. The Department's OCAP limit diversions by the Truckee-Carson Irrigation District (TCID) from the Truckee River within decreed rights, and thereby make additional water available for delivery to Pyramid Lake to the benefit of the Pyramid Lake Paiute Tribe, the threatened Lahontan cutthroat trout and the endangered cui-ui. Before we can support any legislation affecting the waters of the Truckee-Carson River Basins, we must be assured that S. 1554 does not disturb the integrity of the Department's OCAP.

Second, the provisions of S. 1554 direct the Department to initiate settlement negotiations with the Fallon Paiute-Shoshone Tribe within certain parameters. The Department through its Working Group on Indian Water Settlements has already initiated settlement talks with the Fallon Tribe. The Secretary's negotiating discretion and search for solutions with the Fallon Paiute-Shoshone Tribe should not be limited by the provisions of S. 1554.

While other appropriate issues are being addressed this morning, I would like to take my time to focus on these two major concerns and bring to your attention those issues that I believe must be clarified in any legislation in order to ensure that the Department's trust responsibilities are fully and properly discharged.

The allocation and administration of the water resources of the Truckee and Carson River Basins, including Pyramid Lake, have involved the Department in extensive and complex litigation since 1913. The situation in the Truckee-Carson Basins and Pyramid Lake cuts across many of the Department's programs. Indeed, the Truckee-Carson-Pyramid Lake situation may be viewed as the prototype of the competition for and the use of water resources in the development of the west. It involves first, the construction and operation of the Newlands Project, one of the earliest, if not the earliest, of the Bureau of Reclamation projects to encourage the development of the arid west; second, the historic use of water resources in the project for irrigated agriculture which affected Indian and other natural resources; and third, pursuant to the directives of the Congress in the National Environmental

Protection Act (NEPA) and the Endangered Species Act (ESA), the recognition that threatened and endangered species and critical wetland habitat need to be preserved and enhanced.

The DOI has been active during the evolution of the use of water in the Truckee-Carson basins. Most notably, in April 1988, the Department issued its most recent OCAP. The OCAP are presently pending for approval by the Federal district court in Reno. The Department of Justice is vigorously defending the validity of the Department's OCAP.

The OCAP recognize that the United States is trustee for the Indians and in that status it is obligated to protect and preserve the rights and interests of the Pyramid Lake Tribe of Indians in the Truckee River and in Pyramid Lake. The OCAP recognize that to be put into effect this trust responsibility is vested in the Secretary of the Interior. The OCAP recognize that it is in the national interest that the fish resources of Pyramid Lake be restored. The OCAP recognize, and here I quote, that "The regulations...will initiate Departmental controls, lacking in the past, to limit diversions by TCID from the Truckee River within decreed rights, and thereby make additional water available for delivery to Pyramid Lake." The OCAP are based on a particular hydrological model and a particular set of hydrological data. Part of that data is a Section 7 consultation between the Bureau of Reclamation and the Fish and Wildlife Service pursuant to the Endangered Species Act, 16 U.S.C. §1536, in which the Service evaluates the ability of the Bureau in establishing the OCAP for the Newlands Project to avoid likely jeopardy to the endangered cui-ui.

Title II of S. 1554 addresses changes in the management of water supplies within the Truckee River. Moreover, the Preliminary Settlement Agreement between the Pyramid Lake Tribe and the Sierra Pacific Power Company which underlies the provisions of Title II also envisages the negotiation of a further Operating Agreement to assure implementation. These very complicated negotiations are all outstanding. These provisions of S. 1554, --as noted some of which have yet to be written--since they alter the water diversions and call for changes in the management of storage and diversion facilities within the Truckee and Carson river systems, could result in the need for a reevaluation of the Service's Section 7 opinion which, in turn, could result in revisions of the Department's OCAP.

The OCAP are the cornerstone of the Secretary's ability to preserve and to enhance the trust resources of the Pyramid Lake Tribe. The integrity of the OCAP must be assured. I note that in Section 602(f), S. 1554 provides that nothing in Title II may affect the OCAP approved by the district court. However at this juncture without greater examination it is not prudent to assume that the aggregate impacts of the hydrological changes called for by S. 1554 would be compatible with the Department's OCAP.

Title III of S. 1554 authorizes the Secretary to purchase water rights for the benefit of wetlands in the Lahontan Valley and Fernley Sink in Nevada. In addition, to the above mentioned wetlands there are also wetlands on the Fallon Indian Reservation which must be addressed to ensure that provisions of S. 1554 are not detrimental to the survival of the Fallon wetlands. The Fallon wetlands are not only important to the Fallon Tribe but to the total wetland ecosystem.

Title VI of S. 1554 directs the Secretary of the Interior to initiate negotiations with the Fallon Paiute-Shoshone Tribe within certain parameters in order to settle outstanding historic claims between the Tribe and United States and in order to implement the provisions of Public Law 95-337 or any alternatives to the provisions of P.L. 95-337 that are acceptable to the Fallon Paiute Tribe.

The development of the resources of the Fallon Paiute-Shoshone Tribe has not received adequate attention from the United States. Public Law 95-337 was passed to rectify that situation. Its principal provision was to direct the DOI to establish an expanded irrigation system for the Tribe. The Department has now, instituted a full scale effort to address the concerns of the Fallon Tribe. The Department is doing so under the auspices of the Department's Working Group on Indian Water Settlements which has appointed a separate negotiating team for the Fallon Tribe.

In regard to the development of additional irrigation on the Fallon Tribe's lands as envisaged by Public Law 95-337, I believe some cautionary remarks are in order. The construction of an additional irrigation project may be fraught with environmental problems. The construction of this project would likely be opposed by the Fish and Wildlife Service, the Nevada Department of Wildlife and most local environmental organization because of the adverse impacts such a project would have on the Lahontan Valley wetlands. In light of such opposition, it is questionable that the project would receive the necessary section 404 permit from the Corps of Engineers or the Environmental Protection Agency. As a result, the Department through its Working Group will search for creative solutions to fulfill its obligations to the Fallon Paiute Tribe. This is all the more reason why the Department's options to come to an agreement with the Fallon Tribe ought not be foreclosed by the provisions of S. 1554.

Title IV of S. 1554 directs the Department of the Navy to develop an alternative plan for the lands surrounding the Fallon Air Station, replacing its current program of agricultural leasing of those land for the cultivation of primarily alfalfa, and to transfer to the Pyramid Lake Tribe the water rights appurtenant to the Air Station lands that are not needed for dust abatement and fire safety. Rather than the bill prescribing specific disposition of the Fallon Naval Air Station, S. 1554 should allow secretarial discretion to include those resources in a Fallon negotiated solution.

While on the subject of the Fallon Paiute-Shoshone Tribe, I must note that, as drafted, S. 1554 omits any discussion of the contaminant problem associated with the drain water accretions after passage through the Fallon Indian Reservation. The Bureau of Indian Affairs, the Fish and Wildlife Service and the Nevada Department of Wildlife are aware that the TJ drain on the Fallon Reservation transports toxic drain water that flows into the Stillwater National Wildlife Refuge. It is my hope that this contaminant problem will be addressed in any agreement reached between the Department and the Fallon Tribe. I look to this Subcommittee for support in this effort.

This concludes my prepared testimony. I will be happy to answer any questions the Committee may have.

NOT FOR PUBLICATION UNTIL RELEASED
BY THE COMMITTEE ON ENERGY AND
NATURAL RESOURCES
UNITED STATES SENATE

STATEMENT OF

REAR ADMIRAL STEVEN R. BRIGGS, U.S. NAVY

COMMANDER, LIGHT ATTACK WING, U.S. PACIFIC FLEET

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

ON THE

TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS

SETTLEMENT ACT

S. 1554

FEBRUARY 6, 1990

NOT FOR PUBLICATION UNTIL RELEASED
BY THE COMMITTEE ON ENERGY AND
NATURAL RESOURCES
UNITED STATES SENATE

Mr. Chairman:

Thank you for the opportunity to testify today concerning S. 1554 which would resolve several - but not all - of the water issues which have arisen between the States of California and Nevada and within Nevada. I have with me today Mr. Larry L. Jones, the Natural Resources Specialist for Naval Air Station, Fallon, Nevada (NAS Fallon). Larry has been responsible for water and agriculture outleasing matters at NAS Fallon for 16 years.

The Administration cannot support S. 1554 unless major concerns are addressed. We defer to the Departments of Justice and Interior for the specifics of the Administration's position. The Department of Defense does, however, support the water efficiency objectives of S. 1554 and applauds the efforts of Senator Reid, this Subcommittee, and the parties to the numerous disputes in addressing long-standing problems.

S. 1554 would ratify and implement certain water settlements, provide for the enhancement of endangered and threatened species, and provide for the preservation of certain wetlands. I will address only sections 401, 402, and 603 of S. 1554 which provide for the possible transfer of NAS Fallon's water rights and could require the Navy to eliminate its agricultural outlease program on Navy land surrounding the air station. Prior to addressing the specifics of the Bill, however, I should explain the importance of NAS Fallon to the Navy and the importance of an effective, long-term dust abatement and fire safety program to NAS Fallon.

NAS Fallon is the only Navy facility where an entire carrier airwing can train in a wide variety of coordinated air strike tactics. Airwings deploy to NAS Fallon for three weeks of intensive, integrated training prior to deploying aboard aircraft carriers to ensure that they are properly trained to meet the threats they can expect to encounter should hostilities occur during their deployment. Training resources include:

- bombing targets to hone aircrews' weapons delivery skills,

- an electronic warfare range to provide aircrews with simulated surface to air weapons threats to hone aircrews' threat avoidance skills,

- an adversary aircraft squadron to simulate enemy fighter threats to hone aircrews' air intercept and air combat maneuvering skills, and

- the Tactical Aircrew Combat Training System (TACTS) to enable an airwing to evaluate the effectiveness

> of an air strike and the need, if any, for modification in tactics or training to enable the airwing to achieve its target objective and to meet the threats presented. (TACTS is a highly sophisticated computer tracking system which records the flight paths of aircraft involved in an air strike as well as opposing adversary aircraft, the point at which weapons are employed by both "sides," and the simulated flight path of the weapons and which evaluates the recorded information to determine the effectiveness of the air strike. TACTS can also provide a "replay" of the air strike so participants can view and evaluate their performance.)

How then does our Agricultural outlease program further those training objectives? Wind and arid conditions are critical environmental factors which must be faced by NAS Fallon. Blowing environmental debris such as weeds, brush, and gravel can cause foreign object damage (FOD) to aircraft engines. Additionally, at NAS Fallon blowing dust and sand can reduce visibility to the extent that it is necessary to cease air operations. Moreover, vegetation native to the NAS Fallon vicinity tends to be highly flammable. Those factors were taken into consideration in the 1950's when the Navy acquired lands adjacent to NAS Fallon in order to provide a safety buffer for the crash zones (buffer zones) around NAS Fallon and to prevent incompatible development in high noise exposure areas near the air station. The land in question had water rights and was being farmed for alfalfa, irrigated pasture grass, and cereal crops prior to its acquisition by the Navy. Once land near NAS Fallon is tilled for agriculture, the natural stability of the arid soil is reduced. If those agricultural fields had been allowed to return to their natural state, soil stabilization would have been reduced; and the lands would have become far more susceptible to wind erosion. The Navy did not allow that to happen. In order to ensure that the probability of aircraft engine damage from blowing debris and that the severity of dust storms within the buffer zones were kept to a minimum and to preclude incompatible uses, the Navy established a program to continue farming of the newly acquired lands. It did so by establishing an "outlease program." Under the outlease program the lands are leased to private farmers for agricultural purposes. An added by- product of keeping the fields green via the outlease program was natural fire safety. Lands farmed with alfalfa and irrigated pasture provide green fields which establish natural fire control for NAS Fallon and the surrounding area.

The original leases for the lands surrounding NAS Fallon required the lessee to incorporate crop management practices to improve soil quality and productivity. Included in those requirements were the use of approved soil preparation practices, employment of efficient irrigation water management, and application of fertilizer and adequate soil amendment as well as proper livestock management. In addition to requiring the lessee to pay rental payments to the Navy and to pay for the water used for irrigation, each lease had a "soil and water conservation plan" which identified specific projects that the lessee was required to complete during the term of the lease.

NAS Fallon currently has a total of 3,874 acres of land available for agricultural outlease. 2,874 of those acres are water-righted bottom land with an allocation of 3.5 acre feet of water per year. The total irrigation water allocation for NAS Fallon is 10,269 acre feet per year at the head gate (the point of delivery at the field). Included in that allocation is 210 acre feet of water per year which is used to irrigate 60 acres of pasture within NAS Fallon. That pasture provides forage for the horses boarded as part of NAS Fallon's Morale, Welfare, and Recreation Program. The lands in the outlease program and the pastures are located within the Carson Division of the Newlands Reclamation Project. The Newlands Reclamation Project consists of approximately 66,264 acres of irrigated land and is administered by the Truckee Carson Irrigation District (TCID). NAS Fallon's agricultural irrigation water comes from the Lahontan Reservoir which, according to Bureau of Reclamation statistics, obtains approximately 80 percent of its water from the Carson River. The Newlands Reclamation Project provides for the diversion of Truckee River water into the Lahontan Reservoir.

The Truckee River ultimately flows into Pyramid Lake.

Drain water from the irrigation of the majority of the fields in the NAS Fallon outlease program flows to the Stillwater Point Reservoir. That drain water is then dispersed to the Stillwater National Wildlife Refuge and the Stillwater Wildlife Management Area. The remainder of the drain water from the irrigation of the fields in the outlease program flows to the Carson Lake Pasture. Additionally, water used to irrigate the buffer zones helps to recharge the basalt aquifer from which the City of Fallon, Nevada, the Fallon Paiute-Shoshone Indian Tribe, and NAS Fallon draw their drinking water supplies. Water from irrigation of the buffer zones also contributes to recharge of the shallow aquifer which supplies water for the shallow domestic wells on property adjacent to NAS Fallon.

Prior to 1985, all but one of the NAS Fallon Agricultural Outleases were for a term of five years; and they were marginally profitable. As a result, NAS Fallon met its objectives of reducing FOD and the severity of dust storms and increasing fire safety within the buffer zones at no cost to the taxpayer. At the same time NAS Fallon was able to provide for the conservation of soil and water resources, and the local economy benefitted from the agricultural production on the leased lands. I note that the revenue (rent) the Navy receives from its Agricultural Outlease Programs is used to fund the Navy's Natural Resource

Program. The Natural Resource Program provides for the management and protection of renewable natural resources including forests and woodlands, wildlife, soil, water, grasslands, and natural areas. When compatible with the military mission of the facility and in compliance with natural resources policies and laws, the Natural Resource Program also provides opportunities for outdoor recreation.

In the mid-1980's, the Navy developed a 10-year leasing program for the lands adjacent to NAS Fallon. This program is designed to implement a major land restoration project and incorporates several methods designed to use water more efficiently while at the same time improving the quality and productivity of the soil. Under the proposed 10-year plan, 2,448 of the 3,874 acres of land in the buffer zones would be irrigated. 2,065 acres would be for the production of alfalfa hay, pasture grass, and legumes. 383 acres would be for the production of wheatgrass. In the first two years of the 10-year plan, only 8,047 acre feet of water at the head gate would be needed to establish crops on the outleased lands, a savings of 2,012 acre feet per year. The 10-year plan provides for completion of the required improvements by the beginning of the third year of the plan. Accordingly, in year three and thereafter, it is estimated that the outleased lands' crop production could be maintained with approximately 68% of NAS Fallon's water allocation or 6,770 acre feet at the head gate.

In the third year and each of the following years, it is estimated that 3,320 acre feet of water at the head gate would be saved. Those water savings would be accomplished by lining certain irrigation ditches with concrete, installing modernized water flow control devices, laser leveling of fields, and employing other types of state of the art water-saving technology. The water saved could be used to benefit either the Stillwater National Wildlife Refuge, the Stillwater Wildlife Management Area, and Carson Lake Pasture or to increase the flow of the water into Pyramid Lake. Under the 10-year plan, the lessee's would pay for the soil and irrigation improvements in addition to paying rent for the land leased and paying for the water used. Thus, both the water savings and soil improvements would be obtained at no cost to the taxpayers.

In order for the 10-year outlease program to work "as advertised," the lessees must be able to use the land profitably. The traditional cash crop on the lands near NAS Fallon is alfalfa. Irrigated pasture grass and legumes would provide forage for profitable livestock production, but they are not cash crops. Although dense cover crops such as alfalfa and irrigated pasture grass and legumes require more water during the growing season, they provide effective FOD, fire, and dust abatement and they increase soil conservation by effectively stabilizing the soil on a year-round basis. A study has indicated that the land use proposed in the 10-year outlease program will make it economically attractive for lessee's to rent the land, pay the water bills, and make the required improvements.

Thus, the rapid implementation of the proposed 10-year outlease program would clearly appear to be the most beneficial and water efficient manner in which to resolve the difficult water use issues presented. The proposed 10-year outlease program would allow the Navy to reduce the FOD threat and the severity of dust storms and maximize its fire safety within the buffer zones while freeing 3,319 acre feet per year (32%) for other beneficial uses, all with no outlay of Federal funds. While it would be inappropriate to foreclose discussions among agencies of the Executive Branch and interested parties at this point in time, we have examined other alternatives for meeting the water-efficiency objectives of S. 1554, and our comments concerning some of those alternatives follow.

OTHER ISSUES

SUBSTITUTION OF WHEATGRASS

Using tall wheatgrass to provide the required ground cover in the buffer zones instead of alfalfa, pasture grass, and legumes will not significantly reduce the requirements for irrigation waters. In the NAS Fallon buffer zones, these crops require 3.0 acre feet of irrigation water per year. A pure stand of tall wheatgrass requires at least 2.5 acre feet of irrigation water per year. This is at best a water savings of only 17%. While it is generally accepted that some tall wheatgrass would grow with less water, the stress created by a diminished water supply will cause the distance between the individual plants to increase thereby reducing the ground cover to unacceptable levels. If that happens volunteer plants such as Russian Thistle (tumbleweed) will contaminate the fields. Those volunteers are extremely flammable, and their presence would greatly reduce the natural fire protection in the buffer zones. Additionally, volunteers such as Russian Thistle are extremely likely to become environmental FOD. By substituting tall wheatgrass - assuming the use of sufficient water to satisfy our criteria above - for alfalfa in the buffer zones in implementation of the 10-year plan, the additional savings over that projected under our original 10-year plan would only amount to 1,368 acre feet per year during each of the first two years. In year three and each of the following years under a 10-year plan, that additional savings would be reduced to 1,051 acre feet as a result of the programmed decrease in water usage. These minimal savings should be weighed against the negative aspects of using tall wheatgrass throughout the buffer zones. First, it is unlikely that the fields could be leased for the production of a tall wheatgrass crop. We estimate that an individual raising tall wheatgrass would earn approximately $200.00 per acre per year less than an individual raising alfalfa. Second, the viability of a tall wheatgrass as pasture in the Fallon area is not historically established. It would take at least one year to establish tall wheatgrass to the extent that the land could be used for pasture; and because livestock do not eat tall wheatgrass unless there is nothing else available, the lands would not be suitable for pasture unless they were fenced. The cost of fencing could run as high as $9,000.00 per mile, and we estimate that at least 27.87 miles of fencing would be required. Thus, the total cost for installation of fencing would be approximately $251,000.00 Even if all the improvements could be economically accomplished, there is still no guarantee that the lands could be leased for pasture because of the lower nutritional value of tall wheatgrass.

USE OF DRAIN WATER FOR IRRIGATION OF THE BUFFER ZONES

Because tall wheatgrass is less sensitive to salinity than alfalfa, the assumption has been made that tall wheatgrass could thrive on the drain water at NAS Fallon. It has even been asserted that the Navy has agreed that the buffer zones could be properly maintained using drain water alone. Our preliminary inquiries indicate that this is not the case. While these preliminary inquiries were hampered by the fact that there are no statistics available documenting the actual flow of the drain water across NAS Fallon, statistics available for the TCID Diagonal Drain System lead to the conclusion that even if the drain waters from all four TCID drains were available to NAS Fallon, there would be insufficient water available to irrigate any crop until May or June. Because the growing season begins in March, irrigation of the buffer zones with drain water alone would provide insufficient moisture to maintain an adequate ground cover. Further, under a water management delivery plan designed by the U.S. Bureau of Reclamation, the amount of drain water will be reduced over a five-year period which commenced in 1988.

This water reclamation plan, the Operating Criteria and Procedures (OCAP) for the Newlands Reclamation Project, is designed to establish the annual amount of water to be diverted from the Truckee and Carson Rivers, to provide the methodology for calculating the amount to be diverted, and to establish the criteria for diversion of Truckee River water to help meet lawfully mandated water entitlement for irrigated lands within the Newlands Reclamation Project. OCAP is designed to minimize diversions from the Truckee River and spills from Lahontan Reservoir. NAS Fallon's agricultural outlease program is governed by OCAP, which has been the subject of considerable litigation. While S. 1554 would transfer NAS Fallon's excess water rights outside the Newlands Reclamation Project, OCAP would continue to directly effect the amount of water available to NAS Fallon for maintenance of its buffer zones.

Under OCAP the irrigation water available for water-righted lands in the Newlands Reclamation Project will be reduced by 23,370 acre feet between 1988 and 1992 through significant improvements in the water distribution system. These improvements will further reduce the amount of drain water available to irrigate the buffer zones. In light of the fact that the drain water supply would not be available when needed and the probability that the amount of drain water will diminish over the next five years, drain water crossing NAS Fallon does not appear to be a realistic source of irrigation water for the buffer zones. Even if the problems with quantity and timing of the drain water supply could be resolved, the question of water quality remains. Because the soils upstream are saline-alkali affected, it is highly likely that the drain water would require dilution before it could be used to irrigate the tall wheatgrass. If this is the case, additional fresh irrigation water would be required for Navy use in order to properly maintain the buffer zones.

IMPACT ON THE LAHONTAN VALLEY OF TRANSFERRING NAS FALLON'S WATER RIGHTS FROM THE NEWLANDS RECLAMATION PROJECT

The drain waters from the irrigated outleased lands eventually drain into the Stillwater National Wildlife Refuge, the Stillwater Wildlife Management Area, and Carson Lake Pasture. If the additional water saved by implementation of the Navy's 10-

year outlease program (3,320 acre feet) were allowed to flow into the Stillwater National Wildlife Refuge, the Stillwater Wildlife Management Area, and Carson Lake Pasture, the fresh water flow to those areas would increased by 3,320 acre feet per year. Just as importantly, if NAS Fallon is required to use drain water to irrigate the buffer zones, the wetlands in the Stillwater National Wildlife Refuge, the Stillwater Wildlife Management Area, and the Carson Lake Pasture would lose not only the additional flow of fresh water, but they also would suffer a reduction in the amount of drain water flowing into them. Moreover, the aquifer which is the source of drinking water for the City of Fallon, the Fallon Paiute-Shoshone Indians, and NAS Fallon would lose a valuable water source. Further, we project that the quality of the drain water reaching the Stillwater National Wildlife Refuge, the Stillwater Wildlife Management Area, and Carson Lake Pasture would be greatly reduced. Its salinity level would be almost doubled as a result of leeching through the saline soil on two occasions instead of one as is presently the case.

There have even been assertions of which the Subcommittee may be aware that the transfers dictated by S. 1554 would not only benefit Pyramid Lake but also members of TCID in Lahontan Valley in a time of drought. The claim is made that the remaining members of TCID would receive more water in time of drought because NAS Fallon would no longer be entitled to a share of the water. That is, of course, inaccurate. Once NAS Fallon's water rights are transferred from the Newlands Reclamation Project, that water will no longer be available for use by any members of TCID.

THE NAVY SUPPORTS WATER CONSERVATION

The Navy fully supports the conservation of water for Pyramid Lake's endangered and threatened species; and we have continually strived to conserve water. As previously indicated, our original leases for the buffer zones included provisions to ensure water and soil conservation. The 10-year outlease program was designed to conserve even more water. These programs were Navy initiatives, not responses to external pressures which "forced" the Navy to try to find better ways to save water. The Navy recognizes its duty to conserve water and has acted accordingly. In that regard, information which may have been provided to the Subcommittee indicates that the Navy stipulated during the course of a legal proceeding that the Navy's reasons for rejecting alternatives for keeping the buffer zones green were "based primarily on financial considerations and administrative convenience." This is true, but that stipulation must be viewed in context. Included in the financial considerations and the determination of administrative convenience are the following factors: (1) the proposed alternatives would produce minimal water savings; (2) the proposed alternatives did not include financial support for maintenance of the buffer zones; (3) the proposed program failed to compensate for the loss of funds for the Natural Resources Program; and (4) the proposed alternatives did not consider mitigation of uncertain negative impacts on the Stillwater National Wildlife Refuge and the Stillwater Wildlife Management Area.

CONCLUDING REMARKS

In conclusion Mr. Chairman, the Department of Defense supports the water efficiency objectives of S. 1554, but we believe that some form of outleasing program at NAS Fallon may be a better way to achieve the water-efficiency goals of Sections 401 and 402. We would regret the summary foreclosure of this option. I would be glad to answer any questions you may have.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General
Washington, D.C. 20530

FEB 20 1990

Honorable Bill Bradley
Chairman
Subcommittee on Water and Power
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter serves two purposes: First, to transmit the official written testimony of the Department of Justice on S. 1554, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act,[1] to which we have appended, at the Subcommittee's request, a written overview of the water problems and litigation underlying the bill and a list of cases; second, to respond to two questions from the Subcommittee regarding S. 1554, one asked by the Chairman at the February 6, 1990 hearing on the bill, the other asked by Subcommittee staff following the hearing.

As to the first, our official written testimony, together with the overview and case list, are enclosed herewith.[2]

As to the second, you asked the Department at the February 6 hearing if it could provide the Subcommittee an estimate of the total costs incurred by the Justice Department, from 1970 to date, in litigation of water-related disputes that

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[1] Because the Department's written testimony was not received by the Subcommittee 24 hours before the hearing, you instructed the Department to resubmit the testimony as an interested party, rather than as a witness. Deputy Assistant Attorney General Hartman, who testified at the hearing, has communicated to the Department the Subcommittee's displeasure at not having the testimony submitted to it 24 hours ahead of time, and I assure you that the Department will do its best in the future to comply with this time limitation.

[2] Please note that our official testimony does contain several very minor changes from the testimony we submitted on February 5. We understand from Subcommittee staff that our earlier, unofficial testimony will be disregarded.

S. 1554 does or might address. Unfortunately, prior to 1980 the Department did not keep records that could be used to calculate litigation costs. As a result, while the Department can provide a relatively accurate estimate of our costs after 1980, we can only document in general terms the scope of the litigation that went on between 1970 and 1980.

During the period from 1980 to date, the Department of Justice has had significant litigation activity in nine cases involving disputes over the use or control of water in Lake Tahoe, the Truckee and Carson River systems and associated wetlands, and Pyramid Lake.[3] We estimate the cost of this litigation to the Department, including attorney and paralegal salaries, expert witness fees, travel, depositions, transcripts, and printing, to have been approximately $1 million dollars.

In regard to our litigation from 1970 to 1980, we have no accounting records upon which to make a cost estimate, but note that a significant amount of litigation occurred in at least seven cases, a number similar to the number litigated in the period from 1980 to 1990.[4]

Finally, as a follow-up to the February 6 hearing, members of the Subcommittee staff have asked for further explanation regarding the Department's assertion at the hearing and in our written testimony that the $75 million payment to the Pyramid Lake Paiute Tribe provided for in Title V of S. 1554 certainly could not be justified as settlement of potential liability to the Tribe for payment of money damages. A number of considerations led us to this assessment. First, there are no pending claims by the Tribe against the United States for monetary compensation. Second, the Tribe already sued the United States, under the Indian Claims Commission Act, for damages caused by the United States' failure to secure a reserved water right for the Pyramid Lake fishery. That case was settled in 1975 when the United States paid the Tribe $8 million dollars in return for dismissal of the action and the Tribe's waiver of further damages claims against the United States.[5] Third, even assuming, arguendo, that a damages claim of some kind survived the Indian Claims Commission settlement and waiver, any such claim would be barred by at least two statutes of limitation.

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[3] These cases are those marked with an underlined asterisk in the case list attached hereto. Note that there are ten, rather than nine, cases thus marked, because two distinct OCAP issues have been litigated during this time frame.

[4] See case list, cases marked with an asterisk.

[5] See Nevada v. United States, 463 U.S. 110, 135 n. 14 (1982).

I hope that this letter adequately responds to the Subcommittee's requests. The Department is eager to continue its work with the Subcommittee and the parties regarding S. 1554, and believes that a bill acceptable to the United States and the other affected parties can be achieved.

Sincerely,

Bruce C. Navarro

Bruce C. Navarro
Acting Assistant Attorney General

STATEMENT

OF

BARRY M. HARTMAN
DEPUTY ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

FOR SUBMISSION TO THE

SUBCOMMITTEE ON WATER AND POWER
UNITED STATES SENATE

CONCERNING

S. 1554

THE

TRUCKEE-CARSON-PYRAMID LAKE
WATER RIGHTS SETTLEMENT ACT

FEBRUARY 6, 1990

STATEMENT OF BARRY M. HARTMAN, DEPUTY ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION UNITED STATES DEPARTMENT OF JUSTICE FOR SUBMISSION TO THE SUBCOMMITTEE ON WATER AND POWER, UNITED STATES SENATE REGARDING S. 1554, THE TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT

FEBRUARY 6, 1990[1]

Mr. Chairman and Members of the Subcommittee:

Good Morning. I am Barry M. Hartman, Deputy Assistant Attorney General of the Justice Department's Land and Natural Resources Division. I am pleased to have this opportunity to appear before the Committee today on behalf of the Department to discuss S. 1554, which would significantly further the effort to achieve water settlements involving the Pyramid Lake Tribe of Paiute Indians, the States of California and Nevada, and other parties. The settlements concern the allocation and use of the waters of Lake Tahoe and the Truckee and Carson River systems in Nevada and California.

The Justice Department supports the general goal of S. 1554, but cannot support the bill unless several major concerns are first met. I will begin by summarizing the most important of these concerns.

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[1] This replaces written testimony submitted by the Justice Department to the Subcommittee on the evening of February 5, 1990. Because the earlier testimony was not submitted 24 hours prior to the February 6 hearing, as required by Committee rules, the Chairman decided it could not be considered the Department's official testimony, and asked at the hearing that the Department transmit its official written testimony by letter. We note that this, our official testimony, contains several very minor changes from the testimony we submitted on February 5, and we therefore ask that any copies of the earlier, unofficial testimony be disregarded.

First, I note that two very significant components of the bill -- the "Preliminary Settlement Agreement," negotiated between the Pyramid Lake Paiute Tribe and Sierra Pacific Electric, and the "Pyramid Lake Fund," drawn up solely by the Pyramid Lake Tribe -- were formulated and inserted in the bill without Administration concurrence. Because each of these would impose direct obligations on the federal treasury and on a federal agency, without prior federal input or agreement, we must object to their inclusion in the bill as a matter of policy.

Second, we object to the provision creating the Pyramid Lake Fund for the additional reason that we find the amount of the fund -- $75 million dollars, all to come from the federal treasury --- is totally unjustified by any risk of legal liability to the United States, and is inconsistent with this Administration's policy on settling Indian water rights claims.

Third, we object to the lack of provision for state or local cost sharing in connection with the acquisition of water rights for wetlands and other environmental purposes.

Fourth, the bill potentially commits the federal government to actions whose costs are currently unquantified or open ended. Examples are Section 202, modification of Truckee River Diversion facilities; Section 301, water rights purchases for wetlands and operation and maintenance payments to Truckee Carson Irrigation District; Section 401, alternative dust abatement program for Fallon Naval Air Station; Section 402, Endangered Species restoration and recovery; and Section 601, commitments to the Fallon tribe.

Fifth, finality is not achieved. For example, section 103 leaves to further negotiation the allocations from the Truckee. We understand that such an allocation will be specified in an amendment to the bill, and strongly agree that such specificity should be required. Also, in Section 601(a) some claims would be dismissed without prejudice.

Sixth, consideration of all environmental effects is not ensured. Two of the Administration's primary interests are to protect and restore endangered species and the integrity of the Stillwater National Management Area. The bill must provide for preparation of an environmental impact statement by the Secretary of the Interior examining the environmental effects of all changes in the water operations authorized by the bill, allowing the Secretary to recommend or implement appropriate non-federally cost-shared modifications or mitigation measures prior to the implementation of these changes.

Despite these and other serious concerns with S. 1554, I reiterate that the Justice Department is supportive of bill's goals. Over the years, an almost astonishing number of complex disputes and problems have arisen regarding the waters of these two interrelated river systems; the Justice Department has handled over 20 separate lawsuits related to these issues.[2]

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[2] We have attached to our testimony a document providing a broad history and overview of the water problems and disputes (continued...)

While S. 1554, even if properly amended, would not solve all of the problems, it would address some of the most important ones, and has the potential to either conclude or prevent the filing of several significant legal actions. It is also important to note that S. 1554 -- introduced in its present form by Senator Reid following 1 1/2 years of negotiation and hard work -- is the third significant effort over the past twenty years to legislatively resolve some or all of the longstanding Truckee and Carson River water rights disputes. For the first time, it appears that a solution to many of these intensely divisive problems might be within reach.

We commend the parties, the lawmakers, and their staffs for bringing things to this point, and I assure you that this Department is willing to work with the Committee and the parties as necessary to develop a bill that is acceptable to all, but that addresses important federal concerns and is fair to the United States taxpayer.

I turn now to a more thorough listing and more detailed discussion of our concerns with S. 1554, and also with several proposed amendments to the bill, generally following the order of the bill's six titles.

Title I: Interstate Provisions

We support Title I, with certain amendments. If enacted, this Title would conclude over 20 years of effort to adopt an

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[2] (...continued) implicated by S. 1554, which includes a list of the legal actions to which the United States is or has been a party.

interstate compact to allocate the waters of the Carson and Truckee Rivers. The compact effort went down to defeat in Congress in 1986, and litigation in the Supreme Court is the only other option if this effort does not succeed. The water allocations provided in S. 1554 are largely taken from those in the proposed compact.

Before I discuss the allocations basin by basin, I note that we are in general agreement with the basic allocations in the bill. We must object, however, to the extent that any of these basic allocations include uses and amounts beyond those presently in existence, unless the effective date for such additional uses is made subject to completion of the comprehensive EIS that we propose be prepared in conjunction with the Truckee River Operating Agreement. This EIS would take these additional uses into account, allowing the Secretary to review their effects, primarily on the endangered Cui-ui fish, and to take whatever steps are appropriate to avoid or mitigate any such impacts.

We think that conditioning any additional uses within the basic allocations on the results of a complete study of their effects is reasonable. Such an approach would not impair existing water uses, and should therefore not be overly objectionable to other interested parties. In addition, this approach should not delay or affect settlement of the other controversies addressed by the settlement, given the effective date and other contingencies already built into the bill as a result of Title VI and other provisions.

We also have concerns with several specific allocation provisions regarding the Carson River Basin; with the means by which certain of the allocations are to be determined; and with the means by which all the allocations will be enforced.

Section 101: The Carson River

Beginning with the Carson River, we strongly support the bill's recognition of the water rights contained in the Alpine decree. We object, however, to the provision allowing additional allocations, however small, from the upper Carson. Any increased diversions from the upper Carson will reduce the water available to the Newlands project, and increase demands on the Truckee River to make up for those decreases, exacerbating the many problems that already exist in the Truckee basin. Therefore, we oppose any further allocations unless it can be shown that they are lawful existing uses of water which will not adversely affect rights under the Alpine decree. Similarly, consideration of the construction of another reservoir on the upper Carson in Nevada should be made contingent upon it not adversely affecting the decreed rights of the United States, and not requiring the commitment of federal resources.

We object to further allocation that the bill would provide to California in the event that piping of sewage effluent from the Tahoe Basin to the upper Carson River be discontinued. This allocation would create a new entitlement, not recognized under the Alpine decree, and should not be made part of this legislation.

We also recommend that Section 101(c) of the bill be amended to make clear that state abandonment and forfeiture laws apply only to water rights acquired under state law, and not to federal reserved water rights.

Section 102: The Lake Tahoe Basin

As to the Lake Tahoe Basin, the allocations are generally acceptable to the Justice Department. The bill should, however, contain more specific provisions as to where the measurements of diversions are to be taken. In this regard, we support the position of the Pyramid Lake Tribe in its proposed amendments.

Section 103: The Truckee River

The bill does not allocate the waters of the Truckee River, but instead leaves the parties to negotiate an allocation. We find this provision unacceptable. We recommend that specific allocations be included in the bill, along the lines of those discussed in the negotiation session on January 30 between California, Nevada, the Pyramid Lake Tribe, Sierra Pacific, and the United States. This allocation would, among other things, allow California a gross diversion of 32,000 acre feet per year from all sources but limit surface diversions to a maximum of 10,000 acre feet per year. The remainder of Truckee River water would be allocated to the State of Nevada and the United States for the benefit of the Pyramid Lake Tribe.

We do, however, have several concerns with California and Nevada's proposal for this allocation. Any increased surface water use in California reduces the amount available for the

Newlands project and Pyramid Lake. Since any reduction in flows to Pyramid Lake will likely jeopardize the endangered Cui-ui fish, the United States or other parties might be required to take additional actions, such as the purchase of offsetting water rights, to make up for reductions in Truckee River flows. Given the demand for purchasable water rights that will likely be created by other aspects of this settlement, this prospect could be very expensive. Therefore, it is critical that the extent of any additional diversions be determined, that their effects be analyzed in an EIS, and that possible mitigation, with non-federal cost-sharing, be considered, all before the proposed allocations become effective.

Section 104: Compliance with Interstate Allocations

Having discussed the amounts of the allocations, I turn now to the matter of the administration and enforcement of these allocations. The current bill effectively avoids this very important issue, providing only that the States, the Tribe, and the Secretary of the Interior shall negotiate an agreement of how these allocations are to be administered. We do not find this approach acceptable. While not all problems can be resolved in this bill, this one can and should be.

The States and the Tribe have offered different suggestions as to how to resolve this issue. California and Nevada, in their proposed amendments, would leave enforcement of the allocations to each State, and require an annual report of water use for each basin. The Tribe proposes to create a commission of five members, one each from California, Nevada, the United States, and the Tribe, and the fifth member to be selected by the others.

As I have said, we agree that some mechanism is necessary to ensure compliance and resolve any conflicts which may occur. Leaving it entirely to the States, however, divests the United States of any voice in that process. A commission, on the other hand, would likely duplicate existing agencies or authorities, and would appear unnecessary.

Accordingly, we suggest that the bill be amended to provide the two federal district courts, which already have effective control over these water rights issues, are the proper forum for review any actions which are alleged by any party to violate the allocations. This, when coupled with the proposed authority of the Secretary to issue regulations to govern the day-to-day operations of federal reservoirs, including Lake Tahoe, should be adequate to protect the federal interest, and at the same time leave the states free to apply their own laws and procedures where appropriate.

Title II: Water Supply Agreement

Next, I will turn to Title II of the bill, which concerns management of the waters of the Truckee River. Section 201 of Title II authorizes the United States, California and Nevada, the Pyramid Lake Tribe, and Sierra Pacific Electric Company to negotiate a mutually acceptable Operating Agreement for the Truckee River system, which would address the parties' water shortages through improvements in river operations. (Sierra

Pacific, in addition to its hydropower facilities on the Truckee, supplies municipal and industrial water to Reno/Sparks.) These improvements would include creative sharing of water rights among the parties and changes in the operations of the federal reservoirs on the Truckee's tributaries. This Section also provides that, once an Operating Agreement is reached, the Secretary shall take whatever steps are necessary to carry out the Agreement. We support these provisions of Section 201.

Section 201 also, however, directs the Secretary to take whatever steps are necessary to carry out a second and distinct agreement regarding operation of the Truckee River, referred to as the Preliminary Settlement Agreement, which is already in existence. This Preliminary Settlement Agreement was negotiated between only two of the parties, the Pyramid Lake Tribe and Sierra Pacific Electric.

Due to this latter provision, we must oppose Section 201, since it would commit the Secretary of the Interior to implementation of an agreement reached and inserted in legislation without the concurrence of the United States. While the goals of the Preliminary Settlement Agreement appear to be worthwhile, and while the means to achieve those goals seem generally appropriate, many of the specific provisions in the Agreement require careful analysis to determine if the desired results will in fact be achieved, and if there are unspecified or hidden conflicts with federal or other interests. Accordingly, we must oppose the bill unless amended by deleting any provision that could be interpreted as compelling the Secretary to implement the Preliminary Settlement Agreement.

This does not mean, however, that we object to any reference in the bill to the Preliminary Settlement Agreement or its goals, which for the most part appear commendable. For example, the bill could be amended to provide that those negotiating the Operating Agreement should seek, wherever possible and appropriate, to carry out the aims of the Preliminary Settlement Agreement, including the water meter installation in Reno/Sparks provided for in recent Nevada legislation. It could also provide that the Secretary is authorized, in his negotiation of the Operating Agreement, to allow the use of the federal reservoirs to provide a drought reserve to Reno/Sparks in dry years, and additional water to the Pyramid Lake fishery in wetter years, so long as the Secretary retains his authority to determine how this can best be done.

Also, Section 202 should be amended to permit the Secretary to study, in the context of the Operating Agreement, whether there is a need to modify the existing Truckee River diversion facilities to avoid impairing existing water rights.

This is an appropriate time to digress, for a moment, and discuss a matter not in Title II, but that also concerns management of the Truckee River system. An existing law -- the Washoe Project Act -- provides that repayment of the construction costs of Stampede Reservoir be made from revenues generated by municipal and domestic water users. Since Stampede reservoir has now been committed to fish and wildlife purposes, those revenues will not be forthcoming. Accordingly, this bill should amend the Washoe Project Act to reformulate or cancel the repayment provisions regarding Stampede Reservoir.

Returning to Title II, I want to emphasize that the negotiation of an Operating Agreement should be the principal goal of this legislation. The bill should set forth the goals to be achieved under the Operating Agreement, and should specify the factors and interests that the Agreement should take into account, including existing court decrees, the interstate allocations in the bill, applicable state and federal laws, existing multi-party agreements, and, as I have mentioned, the goals of the Preliminary Settlement Agreement. The Secretary should be empowered to issue regulations implementing the Operating Agreement, and provision should be made for limited judicial review of those regulations, foreclosing challenges to the regulations after a limited time. Further, the bill should provide that, in the event an Operating Agreement can not be reached, the Secretary is authorized to promulgate and implement regulations governing the use of the federal reservoirs to accomplish the purposes I have just specified.

Finally, returning to something that I alluded to earlier, the bill should provide that before executing the Operating Agreement on behalf of the United States, the Secretary of the Interior shall prepare a comprehensive EIS on the Operating Agreement and other relevant provisions of the bill, shall consult with the Fish and Wildlife Service under the Endangered Species Act if appropriate, and then shall issue a decision recommending appropriate mitigation measures, with non-federal cost-sharing where appropriate, or changes to be made in the Operating Agreement, at the completion of the EIS process.

Title III: Wetlands Protection

We support Title III's effort to provide additional guaranteed water supplies for the Lahontan Valley wetlands, but oppose any federal contribution that is not made contingent upon a cost matching effort by state and local interests. Healthy, viable wetlands provide significant local, as well as national, benefits. Their maintenance should not depend solely on the federal treasury.

Further, the bill should make clear that authorization of $16 million of federal funds for such purchases should be the limit of federal responsibility for such purchases, and this provision should not be considered as a commitment to make any further purchases of water rights solely from the federal treasury.

Title III should also be amended to remove the limitation that only Nevada water rights may be purchased for wetland purposes. We see no good reason for this limitation. Because the two river systems from which rights would be purchased are interstate, and because these wetlands would provide benefits not only to Nevada, but also to California and the entire Pacific flyway, the Secretary should be allowed to purchase water rights from whatever source is most practical and economical.

In addition, Title III should expressly spell out the criteria by which it is to be determined which water rights can be purchased -- including a criterion which would prevent the purchase of any water right that would result in additional withdrawals from the Truckee River -- rather than incorporating by reference the existing Fish and Wildlife Service eligibility criteria for the Stillwater National Wildlife Management Area.

The bill should also make clear that Title III's limitation that water rights may be purchased only from willing sellers should not to be construed as limiting the authority of the United States under existing statutes.

Finally, the bill should clarify that it is within the Secretary's discretion to decide to what extent it is appropriate to reimburse the Truckee Carson Irrigation District for operation and maintenance charges. And the Secretary should be authorized to make any changes in the water transportation systems necessary to deliver the water purchased or otherwise acquired for wetland uses.

Title IV: Cui-ui and Lahontan Trout Enhancement Program.

We oppose the provision in Title IV regarding the Navy's outlease program at the Fallon Naval Air Station. The Navy's water rights are necessary to naval air operations; they are government property, used for an important and legitimate purpose. The outlease provision in the bill reflects an effort by the Pyramid Lake Tribe to force the Navy to give up some of its rights, primarily to further the Tribe's interpretation of the Endangered Species Act's "duty to conserve" provision. We have successfully opposed the Tribe's construction of this provision and its application to the Navy's program in court, in Pyramid Lake Paiute Tribe v. Department of Navy;[3] this bill should not be a vehicle to give the Tribe a victory on a legal principle found to be without merit.

In order to protect the Navy's rights and the federal position on this important legal issue, we must object to this provision. If the objective is to secure more water for Pyramid Lake, there are more efficient and economical ways to accomplish that end, many of them embodied in other of this bill's provisions.

Also, it should be recognized that the Navy land and the associated irrigation water may be an important element in effecting a settlement with the Fallon Tribe of its claims under section 601(c) of the bill.

We strongly support the goal of Title IV's recovery provisions, which is to safeguard and strengthen populations of the endangered Cui-ui and the threatened Lahontan Trout in Pyramid Lake. There are, however, at least three problems with the means by which the bill would achieve this goal.

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[3] Civil No. R.86-155 BRT (D. Nev.)(opinion unpublished), presently on appeal in the Ninth Circuit Court of Appeals, No. 88-1650.

First, the timetable that would be imposed on the Fish and Wildlife Service to formulate the recovery plans is unrealistic, and is not coordinated with other actions under the bill. For example, the bill requires that the recovery plans be completed within a year of the bill's enactment, despite the fact these plans are to take into account the alternative Naval Air Station program, the development of which the bill also allows a full year from enactment. Similarly, the recovery plans are to take into account the Truckee River Operating Agreement, which is to be negotiated on an open-ended schedule, and could well take far longer than a year to complete. We suggest that the bill not mandate a completion date for the recovery plans, but instead provide that they be completed as soon as is reasonably possible, given the various factors that they are to take into account.

Second, in regard to what the recovery plans are to take into account, the bill makes little distinction between the Lahontan Trout, which is categorized as "threatened" and exists in places other than Pyramid Lake, and the Cui-ui, which is "endangered" and found only in Pyramid Lake. The bill should recognize the distinction, and also should allow the Fish and Wildlife Service maximum flexibility to address, by whatever means it deems most appropriate, the differing problems of these two species.

Third, if restoration of the lower Truckee River or modification of the river delta is recommended as part of the restoration plans, further legislation would likely be needed because the bill does not specifically authorize this work. We recommend that such authorization be provided in this bill, in order for it to be evaluated on its merits.

Title V: Pyramid Lake Development Fund

Title V of the bill would create from the federal treasury a $75 million "Pyramid Lake Paiute Tribal Development Fund." We must oppose Title 5 in its entirety, and also parts (a)-(e) of section 602 of the bill, which are closely related. These provisions were included in the bill at the exclusive request of the Tribe, were not the subject of negotiation between the United States and the Tribe, and are thus inconsistent with the Administration's policy on Indian land and water rights settlements. In the absence of negotiation, the Administration has not had the opportunity to discuss with the Tribe whether litigation risk or other factors might justify any federal payment to the Tribe. Further, it is the Justice Department's view that the amount of the payment in Title V certainly cannot be justified by risk to the United States from claims by the Tribe for money damages.

We will be happy to meet with the parties to further discuss this matter.

Title VI: Miscellaneous Provisions

We have concerns with several of the miscellaneous provisions in Title VI, in addition to those I've already discussed in conjunction with Title V.

Claims Settlement

We support the dismissal of all cases that can be resolved by this legislation. Section 601(a) lists five ongoing cases that would be settled, but provides that only one of them would be dismissed with prejudice. For the sake of finality, all of these cases should be dismissed with prejudice. Further, rather than stating that the "Act is contingent upon settlement of" these cases, which is confusing and ambiguous, the bill should explicitly list the steps upon which dismissal of these cases is premised, and provide that upon completion of those steps, the parties shall have the cases dismissed with prejudice.

Section 601(b) seeks to preclude future litigation regarding any matter that would be settled by the bill. Unfortunately, we believe that this provision will be ineffective, because it leaves to the parties negotiation of a preclusion agreement. It is doubtful that a stipulated agreement could be achieved, given the different interests involved. We recommend that the bill address this issue directly by precluding any party to the Operating Agreement from litigation challenging or seeking to alter the Agreement, except where the Agreement specifically provides for judicial review of the implementing regulations that would be promulgated by the Secretary.

Fallon Tribe

Section 601(c) directs the Secretary of the Interior to diligently pursue a negotiated settlement with the Fallon Tribe that would include the possibility of construction of expanded irrigation works to bring additional lands under cultivation on the Fallon Reservation, as directed by Public Law 95-337, passed in 1978. This Department believes, however, that every effort should be made to reach an expedited agreement with the Fallon Tribe prior to enactment of this legislation, which would call for the repeal of PL 95-337 and would authorize the Secretary to address the concerns of the Tribe by other appropriate means.

If such an agreement with the Fallon Tribe cannot be reached, it would seem advisable to have this bill amend PL 95-337 to give the Secretary discretion to otherwise address their concerns.

Protection of Rights

Section 602 (f) calls for the protection of all existing rights, except where the interstate allocation to California is concerned. In general, the bill and settlement it seeks to achieve are based on the assumption that current water users can be taken care of through adjustments in operating procedures without affecting their water rights. In large part this seems a valid assumption, but Section 602's provision protecting existing rights is so broadly drawn that it may undermine any measure in the operating plan that alters, in any way, the existing regime, since many water users will regard such changes as affecting their rights. Thus, instead of settling matters, Section 602 (f) would almost certainly provoke an entire new round of litigation by those claiming their rights have been somehow affected or diminished as a result of the settlement or the operating agreement. Accordingly, we recommend that this provision be narrowed to prevent it from undermining the basic goals of the settlement.

We also feel that the provision of Section 602(f) regarding the Orr Ditch Court and the Watermaster are unnecessary and should be deleted. The bill already provides in Section 201 that the two courts of jurisdiction must approve any proposed modifications in river operations that would affect the Orr Ditch or Truckee River General Electric Decrees. The addition of the provision in Section 602(f) is redundant, and also, by overstating the role of the Water Master, might be used as a vehicle to attack the settlement by those opposed to it.

Effective Date

Section 603 lists a number of conditions which must be met before most of the bill's provisions take effect. This list of pre-conditions is so extensive it is doubtful whether it could ever be fully met, and thus this provision might negate the entire settlement effort. Accordingly, the provision should be greatly simplified, so that the effective date is deferred only until such time as the Secretary, California, and Nevada jointly certify that sufficient necessary steps have been taken to substantially provide for accomplishment of the goals of the legislation.

OTHER PARTIES' PROPOSED AMENDMENTS TO THE LEGISLATION

As I have previously noted, both California and Nevada and the Pyramid Lake Tribe have proposed amendments to Title I of the bill.

The States' Proposed Amendments

The two States propose to add new sections 106 through 109 to that title. Section 106 would allow voluntary interstate transfers of water within the individual basins, and allow each state to establish the criteria for such transfers. Section 107 would require the use by the U.S. or its agencies to be charged to the allocation of the state where the use is made, except as provided in section 106. Section 108 provides that nothing in Title I is to be construed as modifying or terminating any court decree or affecting the applicability of state law and procedures to water allocated hereunder. And Section 109 provides that water is to be charged to the allocation of the state where it is used regardless of its origin.

We have several specific concerns with these proposed provisions, but believe they can be addressed relatively easily through further negotiations. We will be happy to work with the Committee and the parties in this regard.

One matter that we feel deserves the Committee's close attention is proposed Section 106's provision allowing each of the two States to establish criteria restricting voluntary interstate water transfers. If the States were to develop such restrictions on their own, without Congressional authorization, the restrictions would clearly be subject to scrutiny under the commerce clause and, under the reasoning of the Supreme Court in Sporhase v. Nebraska[4], might well be found unconstitutional. The

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[4] 485 U.S. 941 (1982)

Sporhase Court suggested however, that Congress may, by express statement, authorize states to regulate water commerce in what would otherwise be an impermissible manner. By passage of proposed Section 106, Congress would arguably be making such an express statement. With this in mind, we think Congress should consider the potential ramifications of proposed Section 106's seemingly unlimited authorization of the States' regulation of water transfer, including its effect on other aspects of this legislation.

The Pyramid Lake Tribe's Proposed Amendments

The Tribe has proposed a number of amendments, including a recent one that would restrict drawdowns from Lake Tahoe to replace the 1937 Truckee River Agreement. We feel the agencies need additional time to consider this and similar new matters before we can form a federal position and advise the Committee.

ADDITIONAL OMISSIONS FROM THE LEGISLATION

In addition to the omissions I've already discussed, it is important to note two other issues that are not addressed in the legislation.

Operating Criteria and Procedures Controversy

This bill does not attempt to settle the litigation centered on challenges to the Interior Department's Operating Criteria and Procedures for the Newlands Project, commonly referred to as "OCAP." Instead, these matters are left for court resolution. We find this acceptable because no agreement between the affected parties appears possible, and, absent a congressionally imposed solution -- which none of the parties has suggested -- judicial resolution is the only remaining avenue. We do not feel that it is possible to settle the OCAP within the context of this bill or settlement.

In this regard, we note that a central premise of the bill is that significant water rights purchases, both federal and non-federal, will be required to provide for wetlands, endangered species, and, if the bill is amended as we suggest, for the Fallon Tribe and in connection with Reno/Sparks sewage treatment problems. These purchases will largely depend on reductions of irrigation in the Newlands Project. An OCAP settlement that would limit the purchase of project water, which has been a settlement condition unwaveringly adhered to by the parties left out of this settlement, would undo most or all of the settlement effort embodied in S. 1554.

Reno/Sparks Effluent Diversion

Another significant omission relates to the proposal that Reno/Sparks solve its sewage treatment problems by removing its discharge from the Truckee river and diverting that effluent by pipeline to wetlands in the Lahontan Valley. It has been the position of all parties, except Reno/Sparks, that it would have to purchase water rights to replace the quantities of water taken from the Truckee if such a plan were implemented. This could call for purchases of up to 60,000 acre feet per year.

The interrelationship of this proposal to the existing provisions of the bill, and its effect on the achievability of the bill's goals, requires careful consideration and analysis. If this proposal or some variation of it is to be made part of the bill, provision should also be made in the bill to ensure that this analysis is done before this proposed provision becomes effective.

CONCLUSION

That concludes my comments on S. 1554. To reiterate, while we have a number of serious problems with the bill, and thus must oppose the bill in its present form, we think that the bill has the potential of being a very positive piece of legislation, and I commend the Committee and the parties for their considerable efforts in getting the bill to this point. With proper amendments, the bill would result in the equitable settlement of a number of ongoing disputes, and would avoid the filing of some others; it would facilitate the more efficient and cooperative use and administration of the affected rivers and lakes; and it would serve to enhance and maintain the environment. We look forward to working with the Committee and the parties to achieve these goals.

I would be pleased to answer any questions you might have.

OVERVIEW OF PROBLEMS AND LITIGATION UNDERLYING S. 1554 IN A GEOGRAPHIC AND HISTORICAL CONTEXT[1]

I. Introduction

S. 1554 seeks to resolve a number of disputes over the rights to use the waters of three interstate bodies of water: Lake Tahoe, an interstate "navigable water of the United States," and two interstate rivers, the Truckee and the Carson, both of which arise in the eastern Sierra Nevada Mountains in California and flow into the Great Basin of Nevada. These disputes, sometimes referred to as the "Nevada water wars," are long standing, with many dating back to at least the early years of the twentieth century.

Simply put, the disputes are the result of an array of competing demands on the use and control of a finite and overtaxed water resource. Over the period from 1901 to 1980, the Truckee and Carson rivers, in conjunction with the waters of Lake Tahoe, have on average been able to meet only about 85% of the demand on their waters. Recently, as a result of several dry years and increasing population growth in both the Lake Tahoe and Reno/Sparks areas, the conflict over priorities in the use of these waters has grown even more intense.

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[1] Submitted in conjunction with Department of Justice testimony prepared for the February 6, 1990 Senate Subcommittee on Water and Power hearing on S. 1554, the Truckee-Carson-Pyramid Lake Water Rights Settlement Act.

The demands on these water resources are many, including the recreational, domestic and power needs of several rapidly growing urban areas and a thriving tourist industry; the irrigation requirements of an agriculture located in what is essentially a desert; the increasingly recognized needs of wildlife, including the endangered and threatened species of fish in Pyramid Lake, Nevada, and the migratory waterfowl that inhabit or pass through the shrinking Nevada wetlands fed by the Truckee River; and the claims of two Indian Tribes -- the Pyramid Lake Paiutes and the Fallon Paiute and Shoshones -- whose livelihoods and cultures are dependent upon adequate water supplies. Overarching these demands is the interstate rivalry between California and Nevada for the right to use and control the waters of these shared lake and river systems.

These disputes also bring a number of significant federal interests and responsibilities into play, including the trust responsibility associated with the reserved and aboriginal rights of the two Indian Tribes; environmental and wildlife values, including those found in the various interstate waterbodies and their natural surroundings, and in wetlands and national forests; the safety needs of an important federal military installation; and obligations under important national programs such as the 1902 Reclamation Act, the National Environmental Policy Act, the Endangered Species Act, the Clean Water Act, and the Migratory Bird Treaty Act.

As could be expected, the many competing claims and demands have produced numerous legal actions over the years, including over 20 in which the United States is or has been a party.[2] Additional actions, including one or more original actions in the United States Supreme Court, will likely be filed if settlement of the underlying disputes cannot be achieved. S. 1554 does not seek to address all of these disputes, but those it does address are significant, and have avoided resolution for many years.

The purpose of this document is to describe, from the federal perspective, the geographical, hydrological, and historical setting in which these water disputes have arisen; to outline the disputes themselves; and to set forth in general terms which of these disputes S. 1554 seeks to address.

II. Background

A. Lake Tahoe, The Truckee River, and Pyramid Lake

The Truckee River arises in the Sierra Nevada Mountains in eastern California and flows easterly into Lake Tahoe, one of the most beautiful and relatively unspoiled alpine lakes in the world. Lake Tahoe, which lies astride the boundary between California and Nevada, provides a unique natural recreational area of local, national and even international significance. Most water use in the Lake Tahoe Basin is for recreational and environmental purposes.[3]

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[2] See list of cases attached hereto as Exhibit 1.

[3] Lake Tahoe is also a reservoir, as a result of dam built at the Truckee's outlet in 1913 by the Truckee General Electric (continued...)

The Truckee River leaves Lake Tahoe on its northwestern side, flows in a northerly direction for a short distance, and then turns easterly, descending through a sharply carved valley, where it crosses from California into Nevada some 20-30 miles west of the Nevada cities of Reno and Sparks. In this stretch of river, Sierra Pacific Power Company has constructed and operates several small run-of-the-river hydroelectric generating stations. There are also several tributaries that flow into the Truckee in this stretch. These tributaries have been dammed to create reservoirs, including three owned and operated by the federal government -- Stampede, Boca, and Prosser Reservoirs. These reservoirs, often referred to as the "upstream" reservoirs, store water used to supplant the flow of the Truckee when needed for downstream uses.

The Truckee then passes through the rapidly-growing cities of Reno and Sparks, where it provides the source for domestic and industrial uses. It also receives and becomes the conveyor of sewage effluent away from those cities.

Some 15-20 miles below Reno, the Derby Dam diverts much of the Truckee's flow into the Truckee Canal. This man-made earthen canal runs 32 miles to the Lahontan Reservoir where its waters are commingled with those of the Carson River to provide the

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[3] (...continued) Company, predecessor of Sierra Pacific Electric Company. It became a federal reservoir in 1915 when the United States obtained title to the dam in an eminent domain action, United States v. Truckee River General Electric, No. 14,861 (E.D. Cal.), and has since been operated by the United States pursuant to the terms of the decree issued in that case.

water supply for the Newlands federal reclamation project near Fallon, Nevada.

Below Derby Dam, what remains of the Truckee flows onto the Pyramid Lake Indian Reservation, and finally discharges into Pyramid Lake, which has no outlet. This water body is of the same approximate size as Lake Tahoe, but, being in the desert, has an entirely different character. Despite its harsh environment, the Lake is the home of significant wildlife and fishery resources.

Pyramid Lake lies entirely within the reservation established in 1859 for the Pyramid Lake Paiute Tribe. The Tribe depends for its subsistence, and for maintenance of its native culture, upon uses of Pyramid Lake. The Tribe also uses a small portion of the flow of the Truckee for irrigation of reservation lands.

B. The Carson River System

The Carson River also rises in the Sierra's of eastern California, but south of Lake Tahoe. It flows northeasterly out of the mountains and into Nevada, where it passes through Carson City, the state capitol, and then continues east to where it backs up behind the Lahontan Dam, forming the Lahontan Reservoir. In the Lahontan Dam and Reservoir, built by the federal government in 1915, the waters of the Carson are combined with the diversions from the Truckee, brought by the Truckee Canal, for the use of the Newlands Reclamation Project. Below Lahontan, the Carson River bed serves as one of the principal water delivery systems to the Newlands Project before terminating in the Stillwater National Wildlife Management Area and the Carson Sink, a few miles to the east of the town of Fallon, Nevada.

The Carson river provides much of the water supply for Carson City and Fallon and nearly all of the supply for irrigation in its upper watershed. It is the principal source of supply for the Newlands Reclamation Project, which spreads to the south and east of Fallon, and is also the primary source of water rights for the Fallon Paiute and Shoshone Indian Tribe, whose reservation is just to the northeast of Fallon, bordering Newland Project lands. Carson River waters have also historically been the source and lifeblood of an extensive area of wetlands in the Lahontan Valley east of Fallon.

C. The Newlands Project

The Newlands Reclamation Project was the first federal project authorized under the Reclamation Act of 1902. The Project was originally intended to encompass some 232,000 acres, but, in fact, has never included more than 60 to 65,000 acres, its approximate size today. In 1926, the operation of the Newlands project was by contract turned over from the federal government to the Truckee Carson Irrigation District (TCID), an entity formed under Nevada law to represent project farmers and irrigation interests. TCID has continued to operate the project to date.[4] The Newlands Project is far and away the largest single user of the combined waters of the two river systems.

D. The Fallon Naval Air Station

The Fallon Naval Air Station is an important Department of Defense facility which trains carrier aircraft wings in electronic warfare techniques. It is the only such base available to the Navy for these purposes. As a part of its safety and operational program, the Navy has secured some 3,000+ acres of irrigated lands surrounding the facility to provide for fire and dust control, and other safety related considerations. These lands are at present leased to area farmers under one year government contracts for agriculture -- primarily the growth of alfalfa crops -- to meet these safety requirements. The Navy lands in this program are supplied with water for irrigation from the Newlands Project, of which the Navy lands are a part.

III. Major Water Problems and Litigation

A. Early Water Decrees

To obtain the water rights for the Newlands Project and the Pyramid Lake Tribe, the United States initiated two federal court actions. The first, United States v. Orr Ditch Water Co.,[5] was filed in 1913 to quiet title of all water users on the Truckee

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[4] TCID has been actively in litigation against the Secretary of the Interior as to the right to control the Newlands project since the early 1970's, but has been allowed to retain operational control under a temporary agreement.

[5] The case is not reported. It is referred to by its case number in the U.S. District Court for the District of Nevada - Equity A-3.

River. The second, United States v. Alpine Land and Reservoir Co.,[6] was filed in 1925 to quiet title to the waters of the Carson River.

In the Orr Ditch case, the U.S. sought and obtained the right to appropriate a maximum flow of 1500 cubic feet per second into the Truckee canal for the irrigation of 232,000 acres in the Newlands Project,[7] and also obtained an irrigation right for the Pyramid Lake Tribe for use on approximately 3,000 acres.[8] The court's award is referred to as the "Orr Ditch decree." The United States did not seek any water rights for the Pyramid Lake fishery in Orr Ditch.

A temporary decree entered in the Alpine case in 1951 allowed the United States to appropriate all of the waters of the Carson River that flowed into Lahontan Reservoir for use on the Newlands project. It included a maximum limitation of 2.92 acre feet per annum for deliveries to farm headgates. The final decree, referred to as the "Alpine decree," was entered in 1980. It confirmed the temporary decree and awarded a water duty of 3.5 acre feet per year for bottom lands and 4.5 acre feet per year for bench lands, as in the Orr Ditch decree.

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[6] 503 F. Supp 877 (D. Nev. 1980), aff'd as modified, 697 F.2d 851 (9th Cir. 1983).

[7] The right was limited, however, to a maximum of 3.5 acre feet per annum for bottom lands and 4.5 acre feet per annum for bench lands.

[8] A temporary decree (the Talbot decree) was entered in 1926 reflecting such appropriations, and the final decree was entered in 1944.

As with all such water decrees, the district courts here have retained jurisdiction to enforce the decrees and resolve any differences that have arisen. There has been a moderate amount of such litigation over the years concerning both decrees.

B. Water Shortages at Pyramid Lake: Endangered Species Act, the Pyramid Lake Tribe, and the OCAP

Since creation of the Newlands project, nearly half of the flow of the Truckee River has been diverted out of its basin and into the Carson River basin, for use in the Newlands Project. The right to this diversion is legally protected by the Orr Ditch decree.

As a result of the diversion to Newlands, Pyramid Lake has suffered extensive damage, with its surface level dropping over 70 feet between 1910 to 1965.[9] The falling lake level has had a serious impact on two species of fish native to Pyramid Lake -- the Cui-ui and the Lahontan Cutthroat trout -- primarily by interfering with their ability to spawn and reproduce in the lower Truckee River. As a result, the Cui-ui, which is found nowhere else, was declared "endangered" under the Endangered Species Act in 1967. The Lahontan Cutthroat trout, found in only a few other locations, has been declared a "threatened" species under the same Act.[10]

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[9] In recent years, the lake has regained about 15 feet in elevation due to some wet seasons.

[10] The original strain of the Lahontan Cutthroat trout became extinct. The Lahontan population now in Pyramid Lake was developed from a strain taken from nearby lakes and is maintained by federal fish hatcheries.

The reduction in the size and level of Pyramid Lake, and the decline of the Cui-ui and Lahontan Cutthroat trout, also have had an adverse impact on the Pyramid Lake Paiute Indian Tribe, whose members depend on the Lake and the fish to sustain themselves and their culture.

1. Reserved Fishery Rights

As noted above, when the United States obtained Truckee River water rights for federal and Indian purposes under the Orr Ditch decree, it did not seek water rights for the fishery in Pyramid Lake. Many years later, in September of 1972, the United States filed an original action in the United States Supreme Court against California and Nevada in a belated effort to secure such rights. When the Supreme Court declined to accept jurisdiction, holding that a district court remedy might be available, the United States filed a quiet title suit in the United States District Court in Nevada against all water users in Nevada, seeking to establish a reserved right for the fishery. The State of Nevada and the Pyramid Lake Tribe intervened in the case.

The district court, in an unreported decision, held that the cause of action asserted in this case was the same as had been asserted in Orr Ditch, and that the United States' claim for a reserved water right for the Pyramid Lake fishery was therefore barred by res judicata. The Ninth Circuit affirmed that ruling in 1981, except as it applied to the Truckee Carson Irrigation District. Since TCID had not been a party to the Orr Ditch proceeding -- having been represented in effect by the United States -- the Ninth Circuit held that res judicata did not bar a claim against TCID, seeking a reallocation to the Pyramid Lake fishery of the water rights obtained for TCID by the United States under the Orr Ditch decree.[11]

TCID and the State of Nevada appealed to the Supreme Court. The Court ruled on the case, styled Nevada v. United States,[12] in June of 1983, affirming the Ninth Circuit except for the TCID ruling, which was reversed. The Court also ruled that the water rights obtained in the Orr Ditch decree and assigned by contract to designated lands in the Newlands project belonged to the water users, not the United States, and that they were not subject to reallocation by the United States. The Supreme Court's ruling effectively barred any further opportunity by the United States or the Tribe to have recognized a reserved right for the Pyramid Lake fishery, because none had been sought in the original Orr Ditch case.

In a related case, Northern Paiute Nation v. United States, the Pyramid Lake Tribe, in 1951, sued the United States before the Indian Claims Commission, claiming damages as a result of the failure of the United States to seek sufficient water for the fishery. In 1973, the Commission held that the United States did have an obligation to claim a reserved right for the Pyramid Lake fishery, but left for further litigation the questions of whether the United States had fulfilled this obligation, and if not, what damages, if any, were owed the Tribe. See Northern Paiute Nation, 30 Ind. Claims Commission 210. In 1975, the United States settled the claim, paying the Tribe $8 million, and securing from the Tribe a waiver of further damages claims against the United States for the failure to secure a fishery water right. See Nevada v. United States, 463 U.S. 110, 135 n. 14 (1982).

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[11] 649 F.2d 1286 (1981).

[12] 463 U.S. 110 (1983).

2. Endangered Species Act and OCAP Litigation

The ruling in Nevada left only two courses of action open to the United States to assist in the restoration of Pyramid Lake and its fishery. One would be to purchase water rights for the fishery, and the other, which is now being implemented successfully for the first time, is to manage the Newlands Project in such a way as to reduce waste and excessive deliveries to Project lands, through regulations issued by the Secretary of the Interior. These regulations, referred to as Operating Criteria and Procedures, or "OCAP", were specifically designed to reduce the amount of water necessary to be diverted from the Truckee River to serve the needs of the project, and to allow more to flow into Pyramid Lake.

The Secretary first promulgated OCAP in the late 1960's, and in 1973 adopted even more stringent OCAP by order of the United States District Court for the District of Columbia in Pyramid Lake Tribe v. Morton, an action by the Tribe against the Secretary based on his Indian trust responsibility.[13]

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[13] 354 F. Supp. 252 (1973).

Because, TCID was not then a party to the suit, it was not bound by the court's order, and TCID refused to implement the 1973 OCAP. TCID also filed suit in Nevada against the Secretary challenging his right to issue or enforce OCAP as to the Newlands project. That litigation was finally resolved in the Secretary's favor in 1984 in the case of TCID v. Secretary.[14] Thereafter, the Pyramid Lake Tribe v. Morton case was transferred to United States District Court of Nevada, and TCID and other water users have intervened in the case subjecting themselves to the court's jurisdiction.

In 1987 the Secretary proposed to issue new OCAP to replace the 1973 OCAP and to take into account the intervening decisions noted above. In the current phase of that case, TCID, a group of water users in the Newlands project, the Fallon Indian Tribe, and the State of Nevada are challenging the new OCAP on a variety of grounds, including an alleged lack of authority by the Secretary to interfere with state decreed water rights, and the alleged violations of other federal laws. The Pyramid Lake Tribe is also challenging the new OCAP on the ground that they are not adequate to meet the federal trust responsibility or federal requirements under the Endangered Species Act.

The transfer of the case to the Nevada court and the interventions of TCID and other water users have for the first time resulted in all necessary parties being before the court, and should enable the United States to achieve compliance with the OCAP, subject to the court's final ruling on the challenges by TCID and others.

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[14] 742 F.2d 527 (9th Cir. 1984), cert. denied, 472 U.S. 1007 (1985).

3. Lake Tahoe Dam Case

In another action, the Pyramid Lake Tribe has sued the Secretary of the Interior,[15] alleging that he is violating his duties under the Endangered Species Act by failing to operate (i.e. make releases from) the Lake Tahoe Dam in such a manner as to increase the chances of the Cui-ui's survival. The States of California and Nevada, Sierra Pacific Power Co., TCID, and numerous water agencies in both the affected States have intervened in that case. If the Tribe were to succeed in its claims, it could result in extensive changes in water deliveries throughout the system, and monetary claims against the United States in an unknown but significant amount.

4. Fallon Naval Air Station Case

In another ongoing action, Pyramid Lake Paiute Tribe v. Department of the Navy,[16] the Tribe claims that the "duty to conserve" provision of the Endangered Species Act requires that the United States reallocate the Fallon Naval Air Station's irrigation rights to Pyramid Lake for fishery purposes. As described above, the Navy uses the water to irrigate lands at the Air Station for safety purposes. The district court has ruled against the Tribe,[17] and the Tribe is appealing that order to the Ninth Circuit.[18]

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[15] Pyramid Lake Paiute Tribe v. Lujan, No. S-87-1281, United States District Court for the Eastern District of California. This case has been stayed pending the completion of a revised recovery plan for the Cui-ui.

[16] Case No. CV-R-86-115-BRT, United States District Court, District of Nevada.

5. Wetlands Loss and Degradation

Prior to the Newlands Project, the wetlands at or near the terminus of the Carson River in the Lahontan Valley are estimated to have covered over 85,000 acres. The Stillwater Wildlife Management Area (which includes a National Wildlife Refuge), Carson Lake, and the Fallon National Wildlife Refuge are (or were) within this area. Today, there are only some estimated 15,000 acres remaining, most in the Stillwater Wildlife Management Area, which is probably the most important wildlife area in Nevada, and a crucial feeding and resting area for migratory birds in the western United States. The Fallon National Wildlife Refuge has disappeared altogether due to inadequate flows.

There was also a significant wetland fed by the Truckee River -- Lake Winnemucca, in which the Winnemucca Lake National Wildlife Refuge was located -- estimated to have contained over 27,000 acres prior to diversions from the Truckee River to the Newlands Project. It too has disappeared altogether.

The flows into the remaining wetlands in the Lahontan Valley are highly variable and are almost entirely dependent upon return flows from irrigation in the Newlands Project, or infrequent flood waters or spills during infrequent high flow periods. Further, it must be recognized that enforcement of the 1973 or the new OCAP, while beneficial to Pyramid Lake in the Truckee River Basin, would further reduce the quantity of water now going into the Carson River wetlands.

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[17] The decision is unreported.

[18] Case No. 88-1650

The quality of the water reaching the Lahontan Valley wetlands has also been significantly reduced by the salts and other biologically harmful substances leached by irrigation water out of highly alkaline soils in the Newlands Project and the Fallon Indian Reservation.

There is a recognized need by local, state and federal entities to provide a more regular and assured flow of clean water for these important areas. Their continued degradation and loss through lack of water or toxic problems will be an environmental loss to the entire nation. The State of Nevada and the Fallon Tribe, in the context of the OCAP litigation discussed above, have challenged the new OCAP on the ground that the Secretary did not adequately consider the effects of the OCAP on the wetlands or provide adequate mitigation for expected losses of such resources.[19]

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[19] The Secretary's position is that any reductions in flows are the necessary result of enforcing the provisions of the Orr Ditch decree and the doctrine of beneficial use under Nevada law, and that he has no authority to supply water to the wetlands by tacitly allowing waste to continue in the project.

6. The Fallon Tribe's Irrigation System

The Fallon Paiute-Shoshone Tribe occupied the Lahontan Valley in the 1800's. By 1900, Tribal members had been allotted in fee over 31,000 acres of land in the Fallon area. When the Newlands project was formed in approximately 1906, those individuals gave up their allotments (of 160 acres each) to the Reclamation Service in exchange for a promise that the Tribe would receive a fully constructed irrigation project of some 5,000 acres, with fully paid up water rights. Although the Tribe has since received the promised water rights, the irrigation project was never fully constructed, leaving the Tribe with only some 1500 acres of irrigable land.

In 1978, the Congress in P.L. 95-377 instructed the Secretary of the Interior to complete construction of the Fallon Tribe's irrigation project. Since that time, however, it has become clear that creation of even more irrigable lands out of the desert would be economically unsound and would add to existing environmentally problems. Existing runoff through a new drain on the Fallon reservation is extremely high in toxic salts and it is endangering the Stillwater WMA and its wildlife. The Pyramid Lake Tribe has also charged that any new diversions of water from the Truckee River, which the expanded project would require, would violate the Endangered Species Act. Consideration is now being given to providing the promised irrigation lands through purchases of existing irrigated lands rather than through bringing new, yet-to-be-leached desert lands into cultivation.

The Fallon Tribe has not yet sued the United States over this project, but has threatened to do so if its claims are not soon resolved, and it has, as noted above, intervened in the OCAP case, asserting that the new regulations will interfere with its decreed water rights.[20]

7. Reno/Sparks and Sierra Pacific.

Reno and Sparks, Nevada, depend on the Truckee River for their water supplies. The actual water deliveries to those cities are made by the Sierra Pacific Power Co., which also supplies electrical power to the cities. Over the years, Sierra Pacific has acquired irrigation and other water rights and converted them to municipal uses. The utility has sufficient water rights to meet expected increases in population in those cities until the year 2020 in normal years, but does not have enough to meet the demand during extended droughts. The additional amount of water needed for the cities in such droughts is not large in relative terms -- only some 20,000 acre feet of additional storage to supply projected water needs until the year 2020 -- but its absence will affect many people.

At one time it was expected that a new federal reservoir on the Little Truckee River could, along with other purposes, provide storage to meet this demand. When Stampede Reservoir was authorized for construction on the Little Truckee by the Washoe Project Act of 1956, P.L. 84-858, the authorization contemplated that the costs of that project would be repaid by a local using agency, the Carson-Truckee Conservancy District, out of funds generated by sales of municipal storage space in the reservoir or by irrigation users. In 1969, the Secretary notified the Conservancy District that Stampede, due to demands to provide water for the endangered species in Pyramid Lake, would be operated only for flood control and fish and wildlife purposes. Litigation ensued between the Conservancy district, Sierra Pacific, the State of Nevada, and the Secretary in which the Secretary's authority to so operate the project was challenged. A 1982 decision by the United States District Court in Nevada, Carson Truckee Water Conservancy District v. Watt,[21] affirmed the authority of the Secretary's actions. Since that time, Sierra Pacific has considered other alternatives to meet the anticipated municipal demand, including the construction of other reservoirs, but has also continued to seek ways to use the storage space in Stampede Reservoir.

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[20] It is noted, however, that the OCAP specifically provide that they are not to be construed as affecting the rights of the Fallon Tribe in any respect.

As noted above, the Truckee River is also the discharge point for sewage effluent from the joint treatment facility owned by Reno and Sparks. The existing facility does not meet federal requirements for effluent discharges under the Clean Water Act, 33 U.S.C. 1255 et. seq., and further treatment is required. The Pyramid Lake Tribe filed suit against Reno, Sparks and the United States Environmental Protection Agency for alleged violations of the Clean Water Act, and for causing water quality problems in the lower Truckee River. That litigation has been temporarily stayed pending negotiations of a settlement in which the discharge into the Truckee may be eliminated and the effluent rerouted into wetlands or other acceptable areas. Consideration is being given to piping the effluent to the Stillwater WMA, but no decision has been reached at this time.

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[21] 537 F. Supp. 106.

8. Interstate Rivalry

An overarching issue that affects all others is that of the allocation of water between California and Nevada. Since the two rivers, and Lake Tahoe, are interstate waters, both California and Nevada have a legal claim of right to use their fair portion of those resources. Despite over fifty years of effort, however, California and Nevada have not been able to arrive at a final interstate division of the waters of Lake Tahoe, the Carson River, and the Truckee River. The most recent failure to do this was in 1986, when ratification of an Interstate Compact negotiated between those states, but objected to by the United States, was rejected by the Congress.

Until the interstate allocation of rights to use these waters is resolved, the other conflicts on the rivers cannot themselves be resolved, and neither the States, the United States, the Tribes, nor the water users themselves can be finally assured of the quantities of water they are entitled to use. California has stated its intention to seek an equitable apportionment of these waters in the United States Supreme Court if the latest settlement effort, embodied in S-1554, is unsuccessful. Such litigation would necessarily involve the United States and could take many years for resolution.

IV. Problems and Disputes Addressed by S. 1554

S. 1554 seeks to address or resolve several (but not all) of the major problems regarding use the waters of the two Rivers and Lake Tahoe, and would result in settlement or avoidance of significant litigation.

A. Interstate Allocation

Title I of the bill would resolve or lead to resolution of the dispute between California and Nevada over interstate apportionment of the waters of Lake Tahoe, and the Truckee and Carson Rivers.

The bill (as proposed to be amended by all parties) would confirm the allocation of the Carson River as represented by the Alpine decree, allocate to California and Nevada the amounts agreed to in the failed compact as to Lake Tahoe, and create a new allocation of 32,000 acre feet per year of gross diversions from the Truckee River, and also specify how the allocations are to be measured and from what source. If agreement is finally reached on these amounts, and a Congressional apportionment in such quantities is made, it will resolve these issues without further court action and avoid a significant conflict in the Supreme Court.

B. Pyramid Lake Fishery

The bill does not attempt to settle the OCAP litigation, Pyramid Lake Tribe v. Lujan, but it does address by other means the Pyramid Lake Tribe's claim for sufficient water to support and sustain the fisheries in Pyramid Lake. The United States and other affected parties, including the Tribe and Sierra Pacific Power Co., have begun to consider changes in the manner in which Lake Tahoe, the Truckee River, and the upstream reservoirs are operated, primarily consisting of adjustments to the time and manner of the parties' use of their water rights, depending on the existing hydrological conditions. This water sharing effort would benefit all parties and interests, including the Pyramid Lake fishery. Title II of the bill seeks to create a framework for negotiation and promulgation of this highly desirable and comprehensive plan of operations, referred to by the bill as the "Operating Agreement." Title IV of the bill also addresses the Pyramid Lake fishery problem, albeit in a quite different way. In addition to seeking more water supply for the Pyramid Lake fishery, the Department of the Interior, under the Endangered Species Act, has been preparing Recovery Plans for the Cui-ui and the Lahontan Cutthroat trout. Such plans are intended to consider all measures which may enhance the ability of these species to survive and maintain themselves naturally. The bill directs a broad effort to develop such plans for the benefit of these fisheries.

It is anticipated that if these provisions are enacted in an acceptable form, it will resolve all outstanding suits by the Pyramid Lake Tribe against the United States (and other parties) except for the OCAP case, Pyramid Lake Tribe v. Lujan. Further, the legislation is expected to result in the preclusion of further such claims against any of the parties to the settlement authorized by this bill by any of the signatory parties.

C. Reno/Sparks Water Supply

Through the Operating Agreement provided for in Title II, the bill would also provide a vehicle the means to address the long-standing concern of the growing cities of Reno and Sparks over their need of an assured water supply for domestic purposes during drought periods. Under the Operating Agreement, it is foreseen by the parties that such storage capacity could be provided in federal reservoirs, including Stampede Reservoir, and would do so at a significantly reduced cost from that of the construction of new reservoirs. This provision will not result in the settlement or avoidance of any litigation at present or in the immediate future. It could, however, preclude litigation involving future proposals to construct new reservoirs in the basins which would be unnecessary under the provisions of the bill.

D. Wetlands

Title III of the bill directly addresses the wetlands problem, authorizing the Secretary of the Interior to purchase water rights and water righted lands for the benefit of federal and state wildlife areas in the Lahontan Valley in Nevada. This provision, by providing a mechanism for protection of these resources, will lessen the likelihood that litigation will be brought against the United States for claimed damages to these resources, and could prove helpful in resolving the claims by the State of Nevada against the United States in the pending OCAP litigation.

E. Fallon Indian Settlement

The bill also seeks to address the claims of the Fallon Indian Tribe by providing for the negotiation of an agreement between the United States and the Tribe that would result either in completion of the expanded irrigation works authorized by the 1977 Act of Congress, or in development and implementation of some alternative means to address the Tribe's economic problems.

V. Issues Not Addressed by S-1554.

The only major litigation left unresolved by S. 1554 is the OCAP case, Pyramid Lake Tribe v. Lujan. Since no agreement could be reached with TCID to settle these issues, the remaining parties decided that litigation and judicial resolution was the only alternative, and went forth with the settlement efforts embodied in S. 1554 without TCID.

S-1554 also does not attempt to address the Reno-Sparks sewage issue. While there may be further litigation over this issue in the future, there is a strong possibility that a settlement of these issues will be achieved in the near future (1-2 years). Further, the issues in such a case would only be indirectly related to the water rights problems addressed by this legislation, although it is important that potential changes in water uses of sewage effluent be addressed in an Environmental Impact Statement for the Operating Agreement.

Cases Involving Lake Tahoe, Pyramid Lake, and the Truckee and Carson Rivers

ACTIVE CASES:

*   1. U.S. v. Orr Ditch Water Co., No. Equity A-3, U.S.D.C., D. Nev. (Decree establishing water rights to Truckee River, originally filed in 1913.)[Decision not reported]

2. U.S. v. Truckee River General Electric, No. 14,861, U.S.D.C., E.D. Cal. (Successful suit by U.S. to acquire title to Tahoe Dam, which includes injunctive provisions as to required lake levels and releases.)[Decision not reported]

* * 3. U.S. v. Alpine Land and Reservoir Co., No. D-183, U.S.D.C., D. Nev. Originally filed in 1925. (Decree establishing water rights to Carson River.)[503 F. Supp. 877 (D. Nev. 1980), aff'd as modified, 697 F.2d 851 (9th Cir. 1983)]

*   4. Pyramid Lake Paiute Tribe v. Morton, No. CV-R-85-197, U.S.D.S., D.C. (OCAP case, since transferred to D. Nev.) [Court ordered promulgation of more stringent OCAP, 354 F. Supp. 252 (D.D.C. 1973)]

*   5. Pyramid Lake Paiute Tribe v. Hodel, CV-R-85-197, U.S.D.C., D. Nev., on appeal to Ninth Circuit, No. 86-1915. (OCAP case, 1986 motion by Tribe to require Secretary to enforce provisions of 1973 OCAP.)[District court dismissal not reported, dismissal order rev'd in part, 878 F.2d 1215 (9th Cir. 1989)]

*   6. Pyramid Lake Paiute Tribe v. Hodel, CV-R-85-197, U.S.D.C., D. Nev., on appeal to Ninth Circuit, Nos. 86-15116, 15117. (OCAP case, district court order requiring releases of Stampede credit water in 198[illegible].) [District court decision unreported, rev'd, 882 F.2d 364 (9th Cir. 1989)]

*   7. Pyramid Lake Tribe v. Lujan, No. CIVS-87-1281, U.S.D.C., E.D. Cal. (Lake Tahoe Dam operations case.)[Pending]

8. U.S. v. Alpine, No. Civ-D-185, U.S.D.C., D. Nev., on appeal to Ninth Circuit, Nos. 88-2539 and 2542. (Bench/bottom Case.)[District court opinion not reported, remanded, 887 F.2d 207 (9th Cir. 1989)]

9. U.S. v. Alpine, No. Civ-D-184, U.S.D.C., D. Nev, on appeal to Ninth Circuit, Nos. 87-1746 and 1747. (Water Right

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* Cases with significant DOJ activity in period from 1980 to 1990.

* Cases with significant DOJ activity in period from 1970 to 1980.

Transfers.)[District court opinion not reported, aff'd in part, rev'd in part, 878 F.2d 1217 (9th Cir. 1989)]

*̲ 10. Pyramid Lake Paiute Tribe v. Department of the Navy, No. CV-R-86-115-BRT, U.S.D.C., D. Nev., on appeal to Ninth Circuit, No. 88-1650. (Tribe's claim that Navy's use of water at Fallon Naval Air Station violates Endangered Species Act.) [District court decision denying claim unreported, appeal pending]

*̲ 11. Pyramid Lake Tribe v. Cities of Reno and Sparks, No. CV-R-85-025 RDF, U.S.D.C., D. Nev. (Suit by Tribe over water quality in Truckee River.) [There is also a related case against EPA which is inactive, No. CV-R-86-438 RDF. There was apparently an earlier case against Reno which was dismissed, No. CV-R-82-250-BRT, and also an earlier case against EPA, No. CV-R-81-274 BRT, which is also closed].

12. Pyramid Lake Tribe v. California, No. S-181-378 RER. E.D. California. (Suit by Tribe asserting right to all unappropriated water in Truckee River in California.) [Pending]

13. U.S. v. Orr Ditch, Equity A-3-4, No. CV-R-85-205 RDF, U.S.D.C., D. Nev., on appeal to Ninth Circuit, Case No. 89-15179. (Reno change of place case.) [District court opinion not reported, appeal pending]

INACTIVE OR CLOSED CASES

* 14. Northern Paiute Nation v. U.S., Docket No. 87-A, Indian Claims Commission. (Suit by Pyramid Lake Tribe for damages due to U.S. failure to secure fishery water right.)[Decision that U.S. had duty to assert right, 30 Ind. Cl. Comm. 210 (1973); case settled for $8 million in 1975.]

*̲ * 15. TCID v. Secretary, No. Cv-R-74-34, U.S.D.C., D. Nev., appeal to Ninth Circuit Case No. 83-2351. (Suit by TCID challenging Secretary's termination of 1926 contract.)[District court opinion rejecting challenge not reported, aff'd, 742 F. 2d 527 (9th Cir. 1984)]

*̲ 16. Carson-Truckee Water Conservancy District v. Secretary, No. R-76-156 GJS, on appeal to Ninth Circuit, Case Nos. 83-1549, 1561, 2603 and 1714. (Suit over use of Stampede Reservoir for fishery purposes.)[549 F. Supp 704 (D. Nev. 1982), modified, 741 F.2d 257 (9th. Cir. 1984), cert. denied, 470 U.S. 1083 (1984)]

*̲ Cases with significant DOJ activity in period from 1980 to 1990.

* Cases with significant DOJ activity in period from 1970 to 1980.

* 17. Petition of Watermaster in Orr Ditch, Equity A-3. (1976 petition of Watermaster Claude Dukes for instructions in face of request by U.S. that he enforce provisions of 1944 decree.) [Case later settled and dismissed].

* 18. TCID v. U.S., United States Claims Court, No. 512-78, on appeal to Federal Circuit, No. 88-1338. (Suit by TCID alleging breach of implied contract in 1969 by Interior.) [Dismissed for want of jurisdiction, 14 Cl. Ct. 361 (1988), aff'd, 864 F.2d 148 (Fed. Cir. 1988)]

* 19. U.S. v. TCID, No. F-78-611, U.S.D.C., E.D. Calif. (Suit by U.S. to declare that TCID had no interest in 64 acre tract near Lake Tahoe.)

* 20. U.S. v.TCID (Styled Nevada v. U.S. in Supreme Court). Ninth Circuit Case Nos. 78-1115, 1493 [649 F.2d 1286 (9th Cir. 1981)], Supreme Court Case Nos. 81-2245, 2276, and 82-38 [463 U.S. 110 (1983).] (Suit by U.S. to quiet title to water right to sustain lake fishery. No action in case since Supreme Court decision, although case not technically closed.)

21. Nevada v. U.S., No. R-76-235 BRT (1976 suit by State of Nevada claiming title to bed of Pyramid Lake.) [Case dismissed in 1977 on ground of sovereign immunity, district court opinion not reported, aff'd Ninth Circuit, cert. denied, Supreme Court.]

OTHER RELATED MATTERS:

22. U.S. v. Sierra Valley Water Co., No. 5597, U.S.D.C., N.D. Cal. (Sierra Valley Decree, Oct. 24, 1958, decreed Sierra Valley water right to divert maximum of 60 cfs down Feather River during irrigation season.)

23. Anderson-Bassman decree of Nov. 27, 1905. (Water rights decree for West Fork of Carson River.)

24. Price Decree of Dec. 10, 1921. (Regarding use of water of West Fork of Carson in California.)

* Cases with significant DOJ activity in period from 1980 to 1990.

* Cases with significant DOJ activity in period from 1970 to 1980.

TOWN OF FERNLEY
P O BOX 1624
FERNLEY NV 89408

Testimony regarding S. 1554

The Town of Fernley literally stands in the center of the impact area of S. 1554. Of all the people affected by this Bill, the residents of Fernley stand to lose the most by changes in Truckee River allocations.

Fernley became a town after the turn of the century mainly as a result of the Newlands Reclamation Project. As shown on the attached map, Fernley is 30 miles east of Reno, halfway to Fallon, at the north end of Lyon County and the south end of the Pyramid Lake Paiute Reservation. Interstate 80, Highways 95-A to Las Vegas, 50-A to California and Utah, and 447 to the north intersect at Fernley with the Southern Pacific Railroad to form a hub of commerce and transporation. The population is 7500 and growing, having tripled since 1981. The economy has traditionally been based on agriculture; however, while agriculture remains an important aspect, over the last ten years there has also been a trend toward urban development in parts of Fernley.

The Town of Fernley encompasses 161 square miles of high desert terrain. The aquifer for the Town is the 120-square-mile Fernley Hydrographic Area as identified in the U. S. Geological Survey Open File Report 84-712 (1985). According to that survey, local precipitation is five inches per year, creating a natural aquifer recharge of just 600 acre feet per year (AFY). Truckee River water diversion to the Truckee Canal for the Newlands system provides the only other source of water for the Town. The recharge to the aquifer from the Canal seepage and irrigation diversions has been diminishing from 44,000 AFY since 1979 due to the change from agriculture to urbanization of the Town, and in

1981 was evaluated at 22,650 AFY. The 22,650 AFY seepage and irrigation recharge plus 600 AFY natural recharge provide a total recharge of 23,250 AFY.

From this annual recharge of 23,250 AFY, the aquifer loses 14,380 AFY to groundwater and surface outflows and evapotranspiration, leaving 8,870 AFY available for municipal uses. Fernley holds State permits to pump up to 7,900 AFY of this 8,870 AFY, leaving only 970 AFY. Thus any reduction of recharge to the aquifer is bound to have serious impacts on the amount of water available for Fernley residents.

These figures show Fernley cannot afford to lose the rights to water within our basin. As a reaction to S. 1554 we can foresee a significant portion of funds provided in the Bill being used to purchase water rights under the disguise of buying solely from "willing sellers." However, the Bill's reliance on an open market of willing sellers is overly simplistic; in reality there is no "unwilling" seller if the price is high enough. Considering the amount of funds being appropriated, the Bill as written will create an inflated, buyers' market for the water rights. One sale of Fernley water rights in excess of a million dollars has already been proposed but effectively discouraged, and we know other ranchers are considering selling out. But the Town of Fernley would be excluded from such an open market; Fernley simply does not have the means to acquire the amounts of money to compete with Reno, Pyramid Lake and the Wetlands in an unregulated water market.

The loss of surface irrigation recharge by transfer of water rights out of Fernley will cause the most immediate and significant change to the aquifer. Fernley Town Utilities draws its water from 200 to 400 feet deep for half of the townspeople. The remaining homes rely on individual wells drawing from less than 200 feet. Like the deeper municipal wells, these shallow wells are recharged from Canal seepage and irrigation, and loss of surface water will create an even more immediate and drastic impact on the shallower wells. Should these homeowners drill deeper wells or apply to the municipal system for connection, the increased demand on a decreasing aquifer would be disastrous to Fernley. To offset this impact the Town is currently acquiring water rights to preserve the aquifer balance. Some water rights are being donated by local individuals while others are required by ordinance for new development connection to the municipal system.

In conjunction with the problems of water quantity are the effects of loss of water rights on the quality of our water. Maintaining the equilibrium of water quality is as important as sustaining the volume of water; the standards of water quality are directly tied to the volume of recharge. The aquifer will remain in balance only through preservation of the existing quantities of recharge. The recharge from the Truckee Canal, surface irrigation and the small amount from natural sources are the only means of providing fresh water for the Town; we have no river through the Town, no lake or mountain snowcap from which to draw our water needs.

We have a delicate balance of quality that stands in jeopardy should the recharge be reduced any further. Arsenic and other natural contaminants are balanced at or just under the maximum allowable limits now, and remain steady because of the water recharge. Reduced recharge caused by loss of water rights will reduce water quality, and will do so exponentially, since even minor loss of recharge volume will create major changes in water quality.

S. 1554 represents effective legislation in its intent and in many of its terms, and we support its concepts and goals. But as we see the Bill in its present form, provisions for protection of Fernley's water are non-existant. The Bill provides appropriation of funds for others to purchase Fernley water rights and to provide for development outside the Fernley area. It provides for re-allocation and re-distribution of water to other areas within and outside of the Newlands Project at the expense of Fernley.

What S. 1554 does not represent is a bill that looks out for everyone's interests. Fernley's groundwater recharge from the Canal could change as a direct result of reactions by others to the passage of S. 1554 in its current form. The Bill does not specifically mandate lining of the Canal, but those responsible for the system are already investigating such possibilities. In addition, other projects being investigated for diversion of alternative types of water into the Fernley Basin, such as piping in Reno-Sparks wastewater effluent, would cause additional losses of water rights from Fernley.

We are not asking for the Bill to be defeated but rather to see it refined to meet the needs of all Truckee River water users. We suggest that the harmful effects of the Bill as now written be mitigated by appropriate versions of the following provisions:

1. The Bill needs to be strengthened on the issue of state law jurisdiction over water rights; it must provide that all purchases and transfers of water rights in Nevada be in accordance with Nevada state law.

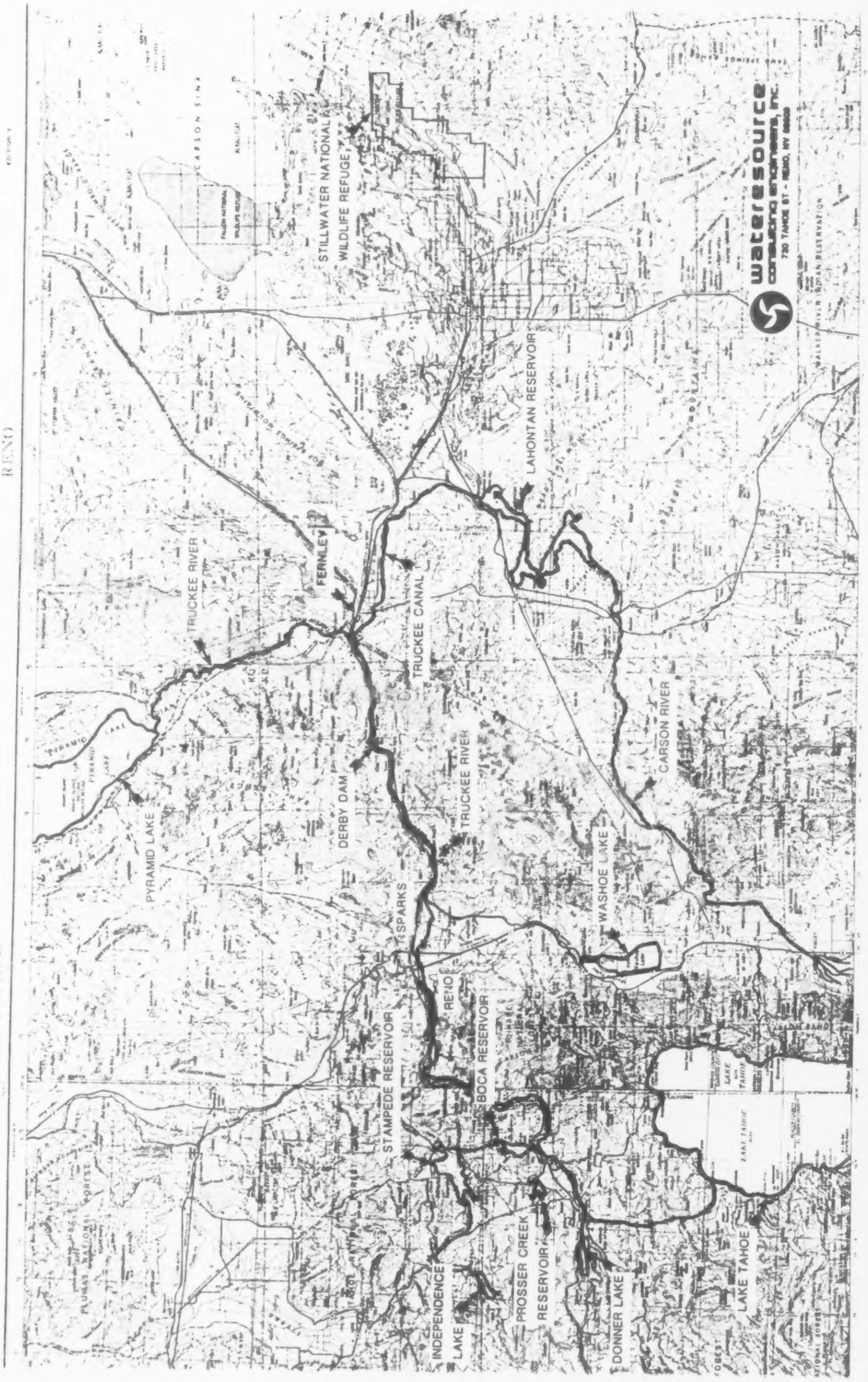
2. If funds generated by the passage of S. 1554 will be used to purchase Fernley water rights for transfer elsewhere, there should be an allotment in the Bill of funds to the Town for provision and treatment of replacement water from other sources or purchase of water rights by the Town to guarantee that they would remain in the Fernley Basin.

3. Development or settlement moneys provided by the Bill to the Pyramid Lake Tribe and the Wetlands require limits or specification of purpose, to prevent such funds from being used to remove water rights from Fernley without replacement or compensation.

4. Funds should be provided for Fernley and others dependant on the Truckee system to compensate any damage and losses caused by operation of the Bill.

5. The effectiveness of the Bill depends on its final, definitive and permanent settlement of all litigation of the competing claims to Truckee River water use.

The Town of Fernley greatly appreciates this opportunity to address the issues raised by S. 1554, and we hope that our considerations will help assure legislation to provide a fair and equitable allocation of the Truckee River water.


RENO
PYRAMID LAKE
TRUCKEE RIVER
FERNLEY
STILLWATER NATIONAL WILDLIFE REFUGE
CARSON SINK
LAHONTAN RESERVOIR
TRUCKEE CANAL
DERBY DAM
TRUCKEE RIVER
CARSON RIVER
WASHOE LAKE
SPARKS
RENO
STAMPEDE RESERVOIR
BOCA RESERVOIR
INDEPENDENCE LAKE
PROSSER CREEK RESERVOIR
DONNER LAKE
LAKE TAHOE
PLUMAS NATIONAL FOREST
WALKER RIVER INDIAN RESERVATION
watersource
consulting engineers, inc.
730 TAHOE ST - RENO, NV

STATEMENT OF

SOUTH TAHOE PUBLIC UTILITY DISTRICT, TAHOE CITY PUBLIC UTILITY DISTRICT, NORTH TAHOE PUBLIC UTILITY DISTRICT and TAHOE-TRUCKEE SANITATION AGENCY, OF CALIFORNIA
ON S. 1554
TRUCKEE-CARSON-PYRAMID LAKE WATER RIGHTS SETTLEMENT ACT

Hearing of Subcommittees on Water and Power
of U.S. Senate Committee on Energy and Natural Resources
February 6, 1990

The South Tahoe Public Utility District ("STPUD"), Tahoe City Public Utility District ("TCPUD") and North Tahoe Public Utility District ("NTPUD") (collectively "the Utility Districts") are public districts in the California portion of the Lake Tahoe Basin. They provide municipal water and wastewater collection service within that basin.

Since 1976, they have been leaders in major water conservation efforts, including retrofitting indoor water fixtures to reduce water use, leak detection and repair and public water conservation education. Two of them, TCPUD and NTPUD, have extensive public recreational facilities and programs for both residents and visitors.

The Utility Districts are primarily concerned about the provisions of S. 1554 respecting the allocation of the waters of the Lake Tahoe Basin, the treatment and disposal of wastewater from that basin and the operation of the reservoirs of the Lake Tahoe-Truckee River system.

The Tahoe-Truckee Sanitation Agency ("TTSA") is a regional public agency in the California portion of the northern Lake Tahoe Basin and the Truckee River Basin. Through one of the most advanced, state-of-the-art, tertiary treatment and disposal plants in the nation, TTSA treats wastewater from these basins and disposes it where it will return to the Truckee River and augment flow into Nevada.

TTSA is primarily concerned about the provisions of S. 1554 that may affect its ability to treat and dispose of wastewater in compliance with its waste discharge requirements as prescribed by water quality regulatory agencies.

The Lake Tahoe Basin is one of the most spectacular scenic and recreational areas in the world. At an elevation over 6000 feet above sea level, it is noted for its size and clarity. The surrounding basin ranges to more than 10,000 feet above sea level. It is high Sierra Nevada environment at its best, with evergreen forests, sparkling smaller lakes, rushing streams and snow capped peaks. It offers numerous outdoor recreational opportunities and attracts growing numbers of residents and visitors each year, amounting to an average population of 91,000 and a peak population of 124,000 in 1989.

About two-thirds of this basin is in California, and the balance is in Nevada. To preserve its fragile environment, development and use are tightly controlled by the Tahoe Regional Planning Agency, which was created and delegated broad power by an interstate compact agreed to by the two states with Congressional consent.

At the north end of the lake at Tahoe City, Lake Tahoe is the source of the Truckee River. It flows northerly and then easterly past the town of Truckee and down to Nevada. There it flows through the Reno-Sparks metropolitan area and the Truckee Meadows, finally emptying into Pyramid Lake within the reservation of the Pyramid Lake Tribe of Paiute Indians ("the Tribe"). While less spectacular than the Lake Tahoe Basin, the California portion of the Truckee River Basin is a beautiful historic and recreational area, with continuing growth in both residential population and visitors.

Wastewater from the California portion of the northern Lake Tahoe Basin is collected by the TCPUD and the NTPUD and delivered to TTSA's wastewater treatment and disposal facility in the vicinity of Truckee, which also receives wastewater from nearby ski areas including the internationally known Squaw Valley (site of a recent Winter Olympic Games) and from the Truckee area. The wastewater is treated to a tertiary level and disposed by underground percolation to the Truckee River.

For many decades the allocation of the waters of the Lake Tahoe Basin and the Truckee River Basin between California and Nevada for use by the various competing interests, including the Tribe, has been unresolved, perpetuating uncertainty and disputes and inhibiting wise water planning and development. An interstate water allocation compact was negotiated by the two states over a period of more than fifteen years and was adopted by them in 1970, but failed to receive the required Congressional consent. Since then, a number of efforts to revive the compact have failed.

Nevada Senator Harry Reid's initiative in stimulating and promoting renewed negotiations among the interested parties during the past year and in introducing S. 1554 offers the most promising hope of finally achieving a resolution of these ancient issues. The Utility Districts and TTSA are very appreciative of Senator Reid's and his staff's (particularly Wayne Mehl's) efforts and the cooperative attitude of the various interested parties in these negotiations.

As introduced, S. 1554 is somewhat of a skeleton bill with regard to interstate allocation, providing essentially for the negotiation of future agreements. On January 30, 1990, a meeting chaired by Wayne Mehl was held in Sacramento to attempt to reach specific agreement on the allocations, for amendment into S. 1554. Participating were representatives of California, Nevada, the United States, the Tribe and other interested parties in the two states, including the Utility Districts and TTSA. Agreement in concept was reached on most of the issues relating to the basic amounts and terms of the allocations, but a few issues were not agreed to and require further negotiation.

The Utility Districts support Section 102 regarding the allocation of the waters of the Lake Tahoe Basin if it is amended as agreed at the January 30 meeting, and if TTSA's opposition to the Tribe's proposed amendment regarding replacement water in the Truckee River Basin, discussed below, is resolved by further negotiation. The Lake Tahoe Basin allocation provisions as agreed in concept are attached as an Appendix. Agreement was not reached, however, on Section 102(b)(1) concerning the extent to which the diversion of water for snow making should be charged against the Lake Tahoe Basin allocation. This is another issue requiring further negotiation.

At the January 30 meeting, agreement in concept was also reached on most of the proposed amendments to Section 103 regarding the allocation of the waters of the Truckee River Basin. However, agreement was not reached on an amendment proposed by the Tribe to require the purchase of replacement water if the method of treatment and disposal of wastewater by TTSA is changed and results in an increase in the consumptive loss of water. TTSA and the Utility Districts oppose the proposed amendment because it would unduly restrict TTSA in adopting the most environmentally beneficial, feasible and cost-effective wastewater treatment and disposal method to comply with its waste discharge requirements. Further negotiation on this issue is necessary.

The Utility Districts and TTSA have a strong interest in the terms of the Operating Agreement to be negotiated in the future pursuant to Section 201 and in the relationship between the Operating Agreement and the effectiveness of other provisions of S. 1554 as provided for in Section 603. The reason is that any change in operation of the reservoirs in the Lake Tahoe-Truckee River system could adversely affect the ability to comply with TTSA's waste discharge requirements and have other adverse impacts on recreational and environmental values in California.

The interested parties agree in concept that the Operating Agreement must be formally approved by California, among others, before the present operation of reservoirs in the Lake Tahoe-Truckee River system can be changed, and that approval of the Operating Agreement is required before other provisions of S. 1554 can become effective. The Utility Districts and TTSA believe the present language of S. 1554 needs to be amended in order to assure these results. Such amendments remain to be negotiated.

The Utility Districts and TTSA are encouraged that substantial progress has been made toward reaching full agreemen on amendments to S. 1554. They look forward to participating in further negotiations to resolve the remaining issues and to agree on specific language of the amendments.

SEC. 102. THE LAKE TAHOE BASIN.

(a) ANNUAL GROSS DIVERSION TOTALS. - The total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in the basin shall not exceed thirty-four thousand acre-feet annually, of which --

(1) twenty-three thousand acre-feet annually are allocated to the State of California for use within the Lake Tahoe Basin; and

(2) eleven thousand acre-feet annually are allocated to the State of Nevada for use within the Lake Tahoe Basin.

After use of the water allocated in this subsection such water may be exported from the Lake Tahoe Basin or reused.

(b) DETERMINATION OF GROSS DIVERSION. - The total gross diversions for use under subsection (a) shall be determined subject to the following conditions:

(1) Water diverted and used to make snow shall not be charged to the gross diversion allocation of either California or Nevada unless and to the extent that the snow is produced for use outside the basin.

(2) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's or Nevada's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per annum.

(3) Where water is diverted by a distribution system, as defined by (iii) below, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) Where a water distribution system supplies any municipal, commercial, and/or industrial points of delivery to use which are not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source.

(ii) Where all municipal, commercial, and/or industrial points of delivery to use (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured as the sum of all amounts of water supplied to each such point of delivery to use, providod there is in effect for said water distribution system a Water Conservation and Management Plan, being either an individual plan or participation in an areawide, regional, or basinwide plan, approved and found to be reasonable under all relevant circumstances by the state agency responsible for allocating water rights, or as otherwise provided by state law, which plan has been reviewed within the past five years, is being implemented in accordance with its adopted schedule, and includes the following elements:

(a) An estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses.

(b) Identification of conservation measures currently adopted and being practiced.

(c) A description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use with an evaluation of their costs and their environmental and other significant impacts.

(d) A schedule of implementation for proposed actions as indicated by the plan.

(e) A description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies.

(f) An evaluation of management of water system pressures and peak demands.

(g) An evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs.

(h) An evaluation of public information and educational programs to promote wise use and eliminate waste.

(i) An evaluation of changes in pricing, rate structures, and regulations.

(j) An evaluation of alternative water management practices, taking into account economic and noneconomic factors, including environmental, social, health, customer impact, technological factors, and incremental costs of additional supplies.

(iii) As used in this subsection, the term "water distribution system" means a point or points of diversion from a water supply source or sources together with associated piping which serve a number of identifiable points of delivery to use, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal, commercial and/or industrial water may have more than one water distribution system;

(4) Water inflow and/or infiltration to sewer lines is not a diversion of water, and such water shall not be charged to the gross diversion allocation of either state.

(5) Regulation of stream flow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either state.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

DONALD A. RHODES, *Director*
(702) 687-6800

LEGISLATIVE COMMISSION (702) 687-6800
JOHN E. JEFFREY, *Assemblyman, Chairman*
Donald A. Rhodes, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

JOHN R. CROSSLEY, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

February 2, 1990

Senator Bill Bradley, Chairman
Subcommittee on Water and Power
Senate Committee on Energy and Natural Resources
Suite SD 364
Washington, D.C. 20510

Dear Chairman Bradley and Members:

The Nevada Legislature, in 1989, established a major legislative study of water and wastewater resources in the state. The Rural Technical Advisory Committee has received a great deal of testimony relative to S. 1554 and its potential ramifications throughout northern Nevada. I was asked to compile this letter in order that you will be aware of the Committee's position on this matter.

The Committee would express its members' support for the objectives, efforts and achievements associated with S. 1554. The measure is of great significance to all of northern Nevada in that it provides the vehicle to resolve decades of controversy.

A few areas of concern, however, must be addressed before the legislation is workable. Vital concerns still exist relative to potential impacts on the quantity and quality of the ground water resources in the rural portions of the Truckee River System. Significant reductions in surface application of irrigation water or major changes in management of the canal system in the Churchill County and Fernley areas would result in real dangers to the ground water aquifers upon which those communities depend for domestic water supplies.

Although the proposed bill provides a mechanism for resolution of major litigation on the Truckee River System, there is also concern that it does not address resolution of numerous additional lawsuits which are of special significance in the rural portions of northern Nevada. Likewise, the measure does not speak to issues associated with major investments in the recreational values of Lahontan Reservoir. Lahonton Reservoir was constructed as the mainstay of the Newlands Project--the initial federal reclamation project in the Nation. Federal and state investments through the years have been substantial, especially in that the reservoir has been developed into the second most heavily utilized park in the State Park System.

Based upon these concerns, the Committee submits the following recommendations:

1. Specify in S. 1554 that any proposals to change the point-of-diversion or point-of-use of water in the Truckee River System (regardless of the ownership of this water) are subject to approval or denial by the Nevada State Engineer as provided in state law.
2. Include in the bill guarantees of mitigation and compensation for any degradation of ground water aquifers resulting from the transfer of water from irrigation or changes in the operation of the river system.
3. Provide in the legislation mechanisms for resolution of all of the relevant litigation associated with the Truckee River System.
4. Include in S. 1554 language to ensure preservation and enhancement of the recreational investments in Lahontan Reservoir.

In closing, I would only impress upon you the significance of our concerns. The Committee has invested a considerable amount of time and effort in analysis of this matter and development of the highlighted recommendations. Their inclusion in S. 1554 would complete a package which would truly qualify as a landmark piece of legislation.

Thank you for your consideration of these significant points. I would be more than pleased to expand upon the details of the recommendations or provide any additional assistance that I can to bring this notable effort to a successful conclusion.

Very truly yours,

Assemblyman John W. Marvel
Chairman, Rural Technical
Advisory Committee to the
Nevada Legislature's Study of
Water and Waste Water Resources
in the State

JWM/llp

STATEMENT OF THE NEVADA WATERFOWL ASSOCIATION
TO THE SUBCOMMITTEE ON WATER AND POWER
CONCERNING
SENATE BILL 1554

My name is Norman Saake and I appreciate the opportunity to express the comments of the Nevada Waterfowl Association to this Subcommittee concerning Senate Bill 1554. I am a native Nevadian who has lived in the state all my life and has hunted and fished on the wetlands of Lahontan Valley, Nevada since 1951. I have been employed by the Nevada Department of Wildlife as the waterfowl biologist for the state since January of 1967 with both statewide and regional responsibility. My primary assignment during that period of time has been directed toward the study and protection of the wetland areas of Lahontan Valley.

The Nevada Waterfowl Association views Senate Bill 1554 as one of the most significant pieces of legislation aimed at settling the controversy over water usage on the Truckee and Carson river basins and for the protection of Nevada's embattled wetland resource.

The wetlands located in Lahontan Valley and on the Fernley Wildlife Management area are the most significant and important in the entire state of Nevada, and are ranked highly with those in other states in the Pacific Flyway and North American Continent. Prior to the turn of the century, there were over 80,000 acres of prime wetlands in Lahontan Valley, which existed on totally prime water from the Carson River. Records show that water in these wetlands was of high enough quality that there was a viable fishery on the Carson Lake and that other species of wildlife such as otters and fresh water mussels were common in these marshes. Until the early 1960's, units on the Stillwater Wildlife Management Area contained one of the best trophy large mouth bass fisheries in the State of Nevada. Currently water quality has deteriorated to the point where these species no longer can exist. Wetland vegetation during the first half of this century thrived and wetland dependent wildlife flourished in large numbers on these marshes.

By the late 1960's and early 1970's, wetlands in Lahontan Valley, including the Fernley Wildlife Management Area, had been reduced to an average of 43,620 acres as a result of up-stream diversions. While water quantity and quality had decreased over the previous 70 years, it was still sufficient to provide adequate habitat for the largest concentrations of migratory birds in Nevada. During that period and into the mid 1980's, the Lahontan Valley wetlands provided habitat for 75% of Nevada's fall duck population, 65% of the state's tundra swan population, 92% of the snow geese, and 50% of the Canada geese which migrate through the state. Over 50% of the canvasback population in the Pacific Flyway migrate through the Stillwater W.M.A. Numbers of both nesting and migrating shorebirds are the highest found anywhere in the state, and are estimated to exceed 75% of the total population. Over 350,000 ducks, 6,000 tundra swans, and 3,500 Canada geese have been recorded on the Stillwater Wildlife Management Area, and on the Carson Lake, populations of over 160,000 ducks, 1,500 Canada geese, 11,000 snow geese, and 1,500 tundra swans have been observed. Both areas have been officially recognized as key production areas for redhead ducks in the past.

In 1988, because of their importance, sensitivity, and high shorebird populations, the wetlands in Lahontan Valley were incorporated into the International Hemispheric Shorebird Reserve Network. They are one of only eight such areas designated in North America and only one of 13 in the entire western hemisphere at the time of their listing. They have also been nominated for protection under the Ramsar Convention and are presently awaiting final approval. The largest single breeding colony of white-faced ibis in North America exists on the Carson Lake. Additionally, significantly high numbers of other wetland associated birds are produced annually. During the spring and fall migration periods, shorebird numbers normally exceed 250,000 and flocks over 100,000 birds of a single species have been observed. The largest white pelican rookery in North America is located on Anahoe Island in Pyramid Lake. These birds are dependent on the wetlands of Lahontan Valley for their existence. In 1987, when habitat conditions on the wetlands were still in suitable shape, there were 7,000 young pelicans produced. During the subsequent two years, while conditions were unchanged at Pyramid Lake, less than 100 young survived annually. This drastic decline was brought about because the wetlands were not receiving adequate water and could no longer continue to produce the necessary food supplies required to allow the pelican population to successfully reproduce. If this trend continues, the pelican population will likely suffer the same consequences that has already befallen many other wildlife species which depend upon the Lahontan Valley wetlands.

As Federal regulations controlling the operation of the Newlands Reclamation Project have been continually tightened under OCAP,wetlands have continued to decline. In 1989, a 100% water allocation year under present OCAPregulations, these wetlands decreased to only 13,626 acres. While the 1989 figures represent near normal operation under the Federally mandated OCAP, wetlands associated with the Newlands Project declined by over 60% from what had existed until the mid-1980's, and were 83% less than they had been at the turn of the century. In addition, as water receipts have continued to dwindle, water quality has deteriorate to the point where some of the water supplies and wetland units are becoming toxic to wildlife. As water quality has declined, it has become increasingly more difficult to grow marsh vegetation needed by wildlife for nesting cover and food. During the past two years, the wetlands of Lahontan Valley have been unable to provide adequate food supplies for wildlife which must migrate through western Nevada, increasing the stress that these birds must endure on their travels. Waterfowl and shorebird reproduction rates have declined sharply, and few birds were successful in producing broods during the past two years. Several species of birds which commonly nested in the area until recently, have no longer been able successfully reproduce under current conditions.

Without an adequate supply of fresh water to the Lahontan Valley wetlands, habitat conditions will continue to degenerate to a point where more of the areas can be expected to become toxic to wildlife. Birds which must migrate through Nevada on their way from the nesting grounds in the north to the wintering grounds in California and Mexico will be subjected to these toxic conditions which can be expected to increase both stress and mortality. During the spring migration, exposure to these conditions can probably be expected to result in additional migration mortality and reduced nesting success. These impacts will not only affect birds nesting in the United States but those that breed in Canada.

The Nevada Waterfowl Association was formed in the fall of 1987 by individuals who had become frustrated with the efforts by State and Federal agencies to project this irreplaceable resource. The organization believed that if the Lahontan Valley wetlands were to be save that the private sector had to become involved. In the two years since its creation the organization has successfully raised over $70,000.00 for these wetlands and contracted to purchase the first waters acquired for the Stillwater Wildlife Management Area and Carson Lake. As stated earlier, we view this piece of legislation as very important toward protecting those wetland resources in Nevada, since the private sector can never be expected to accomplish this task on its own. We also, believe that time is of the essence. Nevada is currently has the fastest population growth rate in the United States, and if the necessary water rights are not acquired within a short period of time that it will be too late to save these irreplaceable marshes.

We have reviewed the proposed Senate bill 1554 and respectfully request that the following changes be made in the bill in order to meet the needs of the Lahontan Valley wetlands.

TITLE III

Since the Carson Lake is managed only by a cooperative agreement between the Nevada Department of Wildlife and the Truckee-Carson Irrigation District, it may not be eligible for water rights purchased under this bill as currently written. Previous water right purchases with Federal funds have all been made only for the enhancement of Stillwater W.M.A. Water rights, if purchased solely for the Stillwater Wildlife Management Area, will adversely impact the wetlands and wildlife at Carson Lake by further reducing water supplies to this area and will result in additional habitat loss and degradation. Because of the significant wetland resources on this area, and based upon historic water deliveries to these two marshes from 1960 through 1985, we request that language be inserted which stipulates the following:

Not less than 40% of the acre feet purchased for perpetuation of the

Lahontan Valley wetlands under this act be transferred to the Carson Lake Wetlands.

The term "Lahontan Valley and Fernley Sink" may be ambiguous, and we suggest that the following terms be used:

The Stillwater and Fernley Wildlife Management Areas and Carson Lake wetlands.

Water right purchases made under PL 100-446 were designed to expedite the process for this limited acquisition and were not intended to be used for a long term acquisition program. It may not be feasible to continue purchasing water rights under the terms of PL 100-446, so the Nevada Waterfowl Association suggests that the following language and criteria be used:

Water rights purchased within the Newlands Irrigation Project must come from willing sellers and must be eligible to receive water under the Federal OCAP at the time of purchase, or have been irrigated any year between 1980 to 1989 years.

This would be consistent with Nevada water law.

Because of the extreme importance of the Lahontan Valley wetlands, and the need to protect a minimum of 26,400 acres of wetlands on the three major areas, $16,000,000.00 will probably not be adequate to achieve this objective. A total of up to $50,000,000.00 from Federal, State, and private sources may be required. The State of Nevada has proposed spending up to $9,000,000.00 of state funds for this project, and the private sector can be expected to raise approximately $1-200,000.00. We feel that an interest bearing account should be established with the Treasury of the United States for the wetlands, similar to the one provided for under TITLE V of this bill. That the account contain $30,000,000.00 to be used only for the acquisition of water rights for the three major wetlands in Lahontan Valley and that any moneys remaining in this account twenty years after passage of this bill would revert back to the United States. The account would be set up in such a manner that funds derived from the sale of lands not needed for wildlife purposes could be sold and those funds be placed back into this special account. Under this proposal, it may be possible to return the bulk of the moneys allocated for wetland water right purchases back to the Federal Treasury in twenty years.

There also needs to be a provision added to this legislation which provides for the continued payment of all operation and maintenance charges in perpetuity to the Truckee-Carson Irrigation District. This is the only way that there will be a guarantee that water purchased for the wetlands will continue to be delivered to those areas. Currently there is no provision of this kind which will allow the Department of Interior to enter into a contract for long term payment of water taxes. With out this provision these water rights could be used for other purposes for which it was not intended and may not be available to the wetlands in future years because the taxes had not been paid.

TITLE IV

Provisions of this title would have serious detrimental impacts on the Stillwater and Carson Lake wetlands since they currently receive return flows from irrigation which takes place on the Fallon Naval Air Station. As an example, based upon past records, is has been calculated that the wetlands received 4,700 acre feet of water from every 10,000 acre feet of water delivered to the Navy lands. If 10,000 acre feet were to be taken off of the Navy lands and transferred to Pyramid Lake then the wetlands could be expected to receive up to 4,700 acre feet less water as a result. This action would cause the loss of over 900 acres of wetlands. In addition, this provision would constitute an inner basin water transfer and would also circumvent Nevada water law. If it is found that the Fallon Naval Air Station can get by with less water, and we support that theory, then only that proportion which comes from the Truckee River should be transferred to Pyramid Lake and all remaining water should be transfer to the Lahontan Valley wetlands. Based upon proposed OCAP figures, the average amount of Truckee River water used to meet the Navy's water rights amounts to only 14-16% of the total. The Nevada Waterfowl Association strongly urges that the following language be used under this title in Sec.401 (a):

> The water rights appurtenant to those lands which are not needed for dust abatement and fire safety requirements shall be transferred to the Stillwater W.M.A. and Carson Lake wetlands and Pyramid Lake. The wetlands will receive water rights equal to the proportion what would have been derived from the Carson River and Pyramid Lake will receive that proportion which would have been derived from the Truckee River, based upon the current OCAP.

This provision should eliminate the adverse impacts to the wetlands caused by the language originally included under this title and section. As the Fallon Naval Air Station has continued to grow, personnel stationed at that facility have put additional demands on local recreational areas such as Lahontan Reservoir and the wetlands of Lahontan Valley. If water rights from the Navy lands were transferred to Pyramid Lake than these recreational areas would be adversely impacted in their ability to provide for these demands. If the water were transferred to the wetlands then these recreational values would be preserved.

Our final comments pertain to Sec. 501(d) of this bill. The amount of money proposed for the economic development is significant and we are concerned that these

funds could be used in a manner which would impact either Anaho Island NWR or the water right acquisition for the Lahontan Valley wetlands. If these funds were to be used to purchase water rights from the Newlands Irrigation Project then they would compete directly with the wetlands portion of this bill and any water rights purchased for Pyramid Lake would directly impact water receipts to the wetland areas. In order to prevent Federal funds from being used in such a manner, which would impact these resource areas, we suggest language similar to the following be inserted into the bill:

> **"and that the use of these funds do not adversely impact the Anahoe Island NWR or the wetlands of Lahontan Valley."**

The Nevada Waterfowl Association appreciates to opportunity to provide its input to this process and to be able to express its support and concerns for this legislation.

If you have any questions please do not hesitate to contact the following at any time.

Norman Saake
4585 Saint Calir Rd.
Fallon, Nevada 89405
(702) 867-2198 or 432-3171

Dr. Ken Taber
580 W. 5th. Street Suite 5
Reno, Nevada 89503
(702) 786-7718 or 747-6426

TESTIMONY OF PHILIP G. SEGES
SENIOR VICE PRESIDENT OF WESTPAC UTILITIES, A DIVISION OF SIERRA PACIFIC POWER COMPANY

BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON WATER AND POWER

REGARDING

S. 1554
The Truckee-Carson-Pyramid Lake Water Rights Act

Washington, D.C.
February 6, 1990

I. INTRODUCTION

Mr. Chairman and members of the Committee, my name is Philip G. Seges. I am a Senior Vice President of Sierra Pacific Power Company. My testimony today is in full support of the Bill as it would read if it included the changes to Title I agreed to by representatives of the State of Nevada, the State of California and the Pyramid Lake Paiute Tribe together with the amendments proposed by Sierra Pacific to Titles II through VI. For the convenience of the Committee, the Sierra Pacific amendments are shown on Exhibit "A" attached hereto.

A. Sierra Pacific Power Company.

Sierra Pacific Power Company (Sierra Pacific) is a subsidiary of Sierra Pacific Resources, a Nevada corporation and the successor to the Truckee River General Electric Company. Westpac Utilities is an operating division of Sierra Pacific Power Company and a public utility engaged in the purchase, transmission, distribution and sale of water and natural gas in the Cities of Reno and Sparks, Nevada, and in portions of Washoe County, Nevada.

Sierra Pacific Power Company is also engaged in the generation, purchase, transmission distribution and sale of electric energy in the States of Nevada and California. Sierra Pacific has four hydroelectric facilities on the Truckee River in Nevada and California. The water used to operate those facilities comes from the Truckee River and is subsequently returned to the River after use.

B. Northwest Nevada - The Area Affected by This Legislation.

Northwest Nevada, the area affected by this legislation is an arid region. The local economy and lifestyle in the area are dependent upon the beneficial use of the waters of the Truckee and Carson Rivers and their tributaries. Literally billions of dollars have been expended on homes, businesses, plants, agriculture, schools, parks, playgrounds and other facilities in reliance on the water provided by those rivers.

Both rivers originate in the Sierra Nevada mountains and flow generally easterly to landlocked termini in the Nevada Desert. The Truckee River flows out of Lake Tahoe and terminates in Pyramid Lake. The Carson River flows through Lahontan Reservoir and terminates in the Carson Sink some 40 miles east of Pyramid Lake.

The waters of each of those rivers have been the subject of comprehensive water adjudications brought by the United States in the United States District Court for the District of Nevada. In 1913, in order to establish a water supply for the first reclamation project, the Newlands Project, the United States filed an action to determine the relative rights of all parties to the waters of the Truckee River in Nevada. That action, entitled United States v. Orr Water Ditch Co. et al. (Equity No. A-3), was ended with the entry of a final judgment in 1944.

The Unites States initiated a similar action on the Carson River in 1925. That action, entitled United States v. Alpine Land & Reservoir Co., et. al, D-183-BRT was concluded in 1983. See, United States v. Alpine Land & Reservoir Co., 503 F.Supp. 877

(D.Nev. 1980), aff'd 697 F.2d 851 (9th Cir. 1983), cert. den., 464 U.S. 863 (1983).

C. The Continuing Conflict Over Water.

Those comprehensive river adjudications have not ended the conflicts over water, especially on the Truckee River. For at least the last twenty years, the conflicts on the Truckee have been the subject of extensive study and massive litigation whose final decisions have been inconclusive. Additional litigation is underway and more is anticipated.

In the early 1970's the United States sought leave to file a complaint in the United States Supreme Court pursuant to the Court's original jurisdiction. The proposed complaint which was against the States of California and Nevada, sought a declaration of the respective rights of the states and of the United States in the Truckee River. The purpose of the United States in seeking to institute that litigation was to perfect a prior water right against all upstream uses that would maintain Pyramid Lake at its then current level and to prevent deterioration of the Lake and the Truckee River as the habitat for the native fish that had historically thrived in the lake. See United States v. Nevada, 412 U.S. 543 (1973). On June 11, 1973, the Supreme Court denied leave to file that complaint.

Thereafter, on December 21, 1973, the United States commenced an action in the United States District Court for the District of Nevada entitled United States of America v. Truckee- Carson Irr. Dist. et al., Civil No. R2987-RCB. That action named approximately 17,000 individuals, the State of Nevada, the Truckee-Carson Irrigation District, the Cities of Reno and Sparks, Nevada, Washoe

County, Nevada, and Sierra Pacific Power Company as defendants. In that action, the United States claimed an implied reserved water right with a December 8, 1859 priority date to maintain and preserve Pyramid Lake and the Truckee River as a fishery.

A bifurcated trial on a single affirmative defense began on November 17, 1975, and continued intermittently until May 20, 1976. The trial court issued its decision on December 12, 1977, and an appeal was taken to the Ninth Circuit. The opinion of that court was issued on June 15, 1981 and was amended thereafter on July 10, 1981 and January 5, 1982. See, United States v. Truckee-Carson Irr. Dist., 649 F.2d 1286 (9th Cir., 1981), amended 666 F.2d 351 (9th Cir. 1982).

The State of Nevada and the Truckee-Carson Irrigation District petitioned for certiorari and the Pyramid Lake Paiute Tribe cross-petitioned for certiorari. Certiorari was granted by the Supreme Court on October 12, 1982, and the case was argued and submitted on April 27, 1983. On June 24, 1983, the Supreme Court of the United States entered its decision which is Nevada v. United States, 463 U.S. 110 (1983).

The case was remanded to the District Court for further proceedings in conformity with the Supreme Court's opinion. Before that court acted on the remand order, however, the Tribe moved to amend its original complaint. On September 20, 1985, the District Court denied the Tribe's motion to amend and dismissed the Tribe's complaint in its entirety. If the case proceeds, it will proceed with reference to the United States' claim for waters for the Stillwater Wildlife Refuge, the Toiyabe National Forest and other waterholes in Nevada.

There have been a number of other related actions, including Pyramid Lake Tribe v. Morton, 354 F.Supp. 252 (D.D.C. 1973). There the Tribe challenged the operating criteria for the Newlands Project developed by the Secretary of the Interior. In Truckee-Carson Irrigation District v. Secretary Civ. No. R-74-34-BRT (D.Nev. 1983), aff'd 742 F.2d 527 (9th Cir. 1984), cert. den., 472 U.S. 1007 (1985), the courts upheld the Secretary of the Interior's decision to terminate the 1926 contract permitting the Truckee-Carson Irrigation District to operate the Newlands project. Another case is Carson-Truckee Water Conservancy District v. Watt, 537 F.Supp. 106, 549 F.Supp. 704 (D.Nev. 1982), aff'd 741 F.2d 257 (9th Cir. 1984), cert. den. 470 U.S. 1083 (1985) where the courts upheld the Secretary's decision to utilize water from Stampede Reservoir located on the Little Truckee River in California exclusively to increase the spawning flows for the endangered Cui-ui and the Pyramid Lake fishery.

The Pyramid Lake Paiute Tribe has also filed an action in the United States District Court for the Eastern District of California entitled Pyramid Lake Paiute Tribe of Indians, Plaintiff v. State of California, et al., Defendants, Civil No. S-81-378-RAR. There the Tribe seeks to determine the nature and extent of its reserved water rights relative to the rights of present and future water users in the State of California. There have been a number of other actions and proceedings involving these matters including actions in the Court of Claims and proceedings before the Federal Regulatory Commission.

Most recently the Tribe filed Pyramid Lake Paiute Tribe of Indians v. Donald P. Hodel, et. al, in U.S. District Court, Eastern District of California, Case No. S-87-1281-LKK/JFM, wherein the Tribe has asked the court to modify the operation of the dam at Lake Tahoe to benefit the endangered species.

The costs of this litigation to the parties and to the judicial system has been staggering. Much of the litigation remains unresolved and, as noted in Section 101 of this legislation, will continue. More importantly, after nearly eighty years of litigation, a reliable supply of municipal and industrial water for the cities of Reno and Sparks and Washoe County is not assured, the cutthroat trout and cui-ui fish remain listed as threatened and endangered species, respectively, and the manner in which the Newlands Project will be operated remains undetermined. The Stillwater Wildlife Area has deterioriated to the point that additional and expensive litigation is probable and the waters of the Truckee and Carson Rivers are still not allocated between California and Nevada.

II. THE NEGOTIATED SETTLEMENT

A. Introduction

Sierra Pacific has always been concerned with the interests of all of the water users on the Truckee and Carson Rivers, including those of the Pyramid Lake Paiute Tribe. In May of 1989, we reached an historic agreement with the Pyramid Lake Tribe to settle the differences raised in lawsuit after lawsuit over the last eighty years.

This Preliminary Settlement Agreement would, subject to the contingencies therein, settle all claims that may relate to the operation of the lakes and reservoirs on the Truckee River and ensures that future lawsuits will not adversely impact the operation of Lake Tahoe or Boca Reservoirs, the reservoirs that form the basic water supply to all users of the Truckee River, or the private reservoirs on the system.

As the public utility providing water to the Cities of Reno and Sparks, Nevada, and to portions of Washoe County, Nevada, Sierra Pacific has a vital interest in making certain that their water supply is reliable now and in the future and our agreement with the Tribe does just that. Those communities will not have reliable water supply without the availability of additional stored water which may be carried over for use during drought periods and without the effectiveness of this settlement.

In the last ten years, the Truckee River annual flows have varied from 35% of normal to over 300% of normal. Currently, the Truckee-Carson River Basins are in an unprecedented third drought year. As of January 31, 1990, the storage in the Two Truckee River Basin reservoirs, Lake Tahoe and Boca Reservoir with a combined total capacity of 785,000 AF, which supply water for adjudicated water right holders in Nevada have been exhausted. The total storage available to ~~Sierra~~ Pacific customers is only 17,500 acre feet.

Even with average precipitation in the Truckee-Carson watersheds for the remainder of the year, basin runoff will be significantly below normal. This limited runoff would again result in storage in Lake Tahoe and Boca Reservoir being exhausted by next October.

If the runoff is less than forecasted, irrigators in the Truckee Meadows will only have water for a limited irrigation season and Sierra Pacific storage reserves would be called on to meet M&I demands.

The Truckee-Carson River Basins will be in a drought situation until there is in excess of 150% of normal runoff in a season or there is a series of above normal runoff years. Historically, Lake Tahoe and other reservoirs have been reduced to levels which will not fully support water rights in Reno, Sparks and Washoe County in about one year in eight. It can be expected that such drought conditions will occur in the future with similar frequency.

It is extremely disappointing that the Tribe and TCID have not been able to reach an agreement and encourage them to continue to attempt a settlement.

B. Sierra Pacific's Settlement Objective

Sierra Pacific's basic objective in a negotiated settlement is to store water in upstream reservoirs in storage space that otherwise would not be utilized. The water that would be stored in this heretofore unused space is water generated through the exercise of existing Sierra Pacific water rights. The primary water rights exercised are the release and restorage of Sierra Pacific's privately-owned-stored water from Independence Lake and Donner Lake. The other source of water used to create storage is the storage of the consumptive use fraction of any water which Sierra Pacific is entitled to, but does not divert. Under current regulations and requirements, Truckee River area irrigation rights are acquired in advance of utilization; therefore, the accumulated irrigation rights are not fully utilized each year. Under the

Preliminary Settlement Agreement, the consumptive use fraction of the unexercised rights will be stored in available upstream reservoir space. In addition to the storage generated from Sierra Pacific's water rights, the Agreement provides for 7,500 acre-feet (AF) of water to be stored in Stampede Reservoir by the Pyramid Lake Paiute Tribe for M&I use. This water is intended to be used when water supply conditions are drier than those associated with the most severe recorded drought, that experienced during the period 1928 through 1935.

C. PROVISIONS OF THE SIERRA PACIFIC - TRIBE AGREEMENT

The key elements of the Preliminary Settlement Agreement are described in the following sections.

1. Hydroelectric Water Rights.

Sierra Pacific agrees to waive, and is to be compensated for, its single-purpose hydroelectric water rights decreed under Claims 5 through 9 of the Orr Ditch Decree to the extent that such water would otherwise have flowed into Pyramid Lake. The water waived under this provision may be stored in upstream reservoirs and become Fishery Credit Water to be used for the benefit of the Pyramid Lake fishery.

2. Water Right Dedications

Pursuant to Rule No. 17 of Sierra Pacific's Public Service Commission of Nevada rules and regulations, applicants for new water service will continue to be required to dedicate water rights to Sierra Pacific or the applicable local government.

- Until Sierra Pacific's service commitments have reached a total of 80,000 AF, surface water rights will continue to be dedicated at the rate of 1.72 AF for every 1.0 AF of demand. Surface water rights need not be dedicated for commitment based on groundwater resources.

- After Sierra Pacific's commitment reaches 80,000 AF, and if Sierra develops an additional 3,000 AF of groundwater in the Truckee Meadows, surface water rights will be dedicated at a rate of not less than 1.11 AF for each 1.0 AF of demand.
- After service commitments have reached 80,000 AF and if Sierra Pacific has not developed additional groundwater, surface water rights will be dedicated at the rate of not less than 1.0 AF for every 1.0 AF of demand.

3. Auxiliary Water Supplies

Sierra Pacific agrees to use its best efforts to develop the following water supply options:

- Increased groundwater pumping in the Reno Sparks area and development of the Sparks Pit source.
- Acquisition of TCID's share of Donner Lake storage

The Pyramid Lake Paiute Tribe agrees to waive its rights to object to the implementation of these options.

Water developed from any of these options will be used to meet Sierra Pacific's future normal-year water demands between 80,000 AF and 119,000 AF. Water developed through the implementation of any of these options is in addition to those water rights acquired by Sierra Pacific by water right dedication as described above.

4. Accrual and Use of Credit Storage

To ensure that water stored for M&I use during drought periods is available during the critical period, the Agreement provides for the classification of the M&I stored water into two categories, Firm and Non-Firm M&I Credit Water. When Sierra Pacific's normal water year demand has reached 119,000 AF, Sierra Pacific can store up to 12,000 AF of Firm M&I Credit Water in Stampede Reservoir. Firm M&I Credit Water will not be spilled from Stampede Reservoir nor will evaporation losses be charged against it unless it is the only remaining water in Stampede Reservoir. Up to 20,000 AF of Non-Firm M&I Credit Water can be stored in Truckee River reservoirs (Lake Tahoe, Boca, Stampede and Prosser Reservoirs). However, Non-Firm Credit Water is generally subject to spill and evaporation losses. The quantity of Firm and Non-Firm Credit Water that can be stored in Truckee River reservoirs will vary in relation to the Sierra Pacific demand and the amount of water diverted in California between Lake Tahoe and Farad. The minimum Firm Credit Water allowed in the settlement is 2,000 AF and the minimum Non-Firm Credit Water is 4,000 AF, and storage space will be available for these amounts immediately upon the effective date of the Agreement, as is space for the 7,500 AF of what which is to be available in a worse than worst case drought.

The settlement provides for the accumulation and retention of additional M&I Credit Water above the foregoing limits when a Drought Situation occurs. A Drought Situation is defined as a period based upon an April 1 seasonal system operation forecast when either of the following conditions are predicted:

- There will not be sufficient unregulated natural runoff and pooled water in storage in the Truckee River Reservoirs to meet Floriston Rates through October; or
- The level of Lake Tahoe, excluding all Firm M&I, Non-Firm M&I and Fishery Credit Water will be below 6223.5 feet Lake Tahoe Datum on or before the following November 15.

If, on April 1, the Truckee Basin is not in a Drought Situation, any credit storage accumulated by Sierra Pacific above the 32,000 AF becomes fishery credit water. This water is available to supplement April-June spawning flows.

5. Worse-Than-Worst Case Drought

In the event of water supply conditions more severe than those experienced during the critical drought period of 1928-1935, Sierra Pacific shall have access to the following water supplies in the order listed:

- Pumping of water from below the outlet works of Independence Lake to the extent allowed by applying for the necessary permits, up to 5,000 AF.
- 7,500 AF of fishery credit water in Stampede Reservoir.
- Water from below the natural rim of Lake Tahoe, as may be allowed by the eventual final settlement among all parties or existing law.

6. Sierra Pacific Water Supplies Beyond 119,000 AF Demand

Sierra Pacific may develop additional water supplies to meet normal-year demands in excess of 119,000 AF by the following:

- Acquisition of water rights in addition to those defined in the water right dedication provisions above.

- Water from hydrologic basins outside the Truckee River basin.
- Truckee River basin groundwater in excess of 15,616 AF.
- Implementation of other measures.

Supplies so developed shall not adversely impact the existing water rights or claims of water rights of the Pyramid Lake Paiute Tribe.

7. Use of Truckee River Water Outside the Basin

Sierra Pacific may utilize Truckee River water rights outside the Truckee River Basin provided that return flows to the Truckee River are not less than if the rights had been used inside the Truckee River Basin.

8. Recognition of Water Rights

Nothing in the Preliminary Settlement Agreement shall:

- Affect any legal, valid water right of any other party to use the waters of the Truckee River and its tributaries.
- Affect Sierra Pacific's right to acquire and place to beneficial use any legal, valid water right on the Truckee River and its tributaries.
- Affect the amount of water stored in and released from Truckee River reservoirs pursuant to the Orr Ditch Decree and the Truckee River Agreement except those modifications expressly allowed in the Preliminary Settlement Agreement as described above. However, if the Agreement results in less water being available to water right owners than they are entitled to, the

Federal Water Master may make up such deficit from the stored water of the party which had benefited therefrom.

- Affect dam safety and flood control requirements of Truckee River Reservoirs.
- Affect the implementation of the 1959 Tahoe-Prosser exchange agreement.
- Result in the abandonment or forfeiture of any water rights of any other party.

9. Conditions for Agreement to Become Effective

The Preliminary Settlement Agreement does not take effect until and unless all of the following have taken place:

1. The United States Congress has enacted and the President has signed the necessary Pyramid Lake and Truckee River settlement legislation.
2. The Nevada legislature has enacted and the Governor has signed legislation that permits the installation of water meters on residential customers within Sierra Pacific's service territory, exclusive of apartments and condominiums with separate metered irrigation services and which also permits the billing of customers on applicable metered rate.
3. A plan for financing and installing water meters has been approved by the governmental agencies having jurisdiction.
4. The Public Service Commission of Nevada has approved an inverted block rate that encourages conservation.

5. A mandatory conservation plan designed to achieve a 10 percent annual savings during a drought has been approved by governmental agencies having jurisdiction.
6. An operating agreement providing for the administration and implementation of the provisions of the Preliminary Settlement Agreement has been executed by Sierra Pacific, the Tribe, and the United States.
7. The United States agrees to become a party to the Preliminary Settlement Agreement and agrees to be bound by its terms and conditions.
8. All contracts and governmental approvals required to carry out the terms and conditions of the Preliminary Settlement Agreement have been executed.
9. The Preliminary Settlement Agreement and the operating agreement have been approved, ratified, and confirmed by the courts having jurisdiction over the Orr Ditch Decree and the Truckee River General Electric Decree.
10. Sierra Pacific and the United States have entered into an agreement providing for the compensation of Sierra Pacific for the reduction in hydroelectric power generation that will result from waiver of its water rights noted above.
11. Sierra Pacific and the United States have entered into an agreement for the compensation Sierra Pacific will pay the United States for using storage capacity in Truckee River reservoirs.

12. All pending litigation involving Sierra Pacific, the Tribe, and the United States has been resolved.

D. BENEFITS FROM A SETTLEMENT

The Agreement reached between Sierra Pacific and the Pyramid Lake Paiute Tribe was an initial step toward an overall settlement of Truckee River issues. The benefits of resolving the nearly 80 years of conflict involving the Truckee River are broad in scope and include virtually every party on the river. Numerous lawsuits over the Truckee River are pending, and all parties would benefit from their resolution or dismissal. Some specific benefits include:

- Implementation of a firm and equitable water allocation between California and Nevada
- Removal of legal clouds over water rights
- Storage of water to support Truckee River irrigation rights that are converted to municipal use
- Maintenance of higher pool levels at Stampede Reservoir, benefiting recreation and environmental conditions
- Drought protection for both existing and new Sierra Pacific customers
- Repair and rehabilitation of diversion structures on the River
- Improvement in fish spawning operations, enhancing the recovery of threatened and endangered species

- Acquisition and delivery of a fresh water supply to Stillwater Wildlife Management Area
- Funding for Tribal economic development
- Funding for rehabilitation of the Lower Truckee River for fishery habitat

III. STATEMENT OF REASONS FOR SIERRA PACIFIC POWER COMPANY'S PROPOSED CHANGES TO S. 1554.

Sierra Pacific proposes that S. 1554 be amended as shown on Exhibit "A" attached hereto. Exhibit "A" shows deleted material as struck-through text and additions appear in italics. The reasons for the changes proposed by Sierra Pacific are set forth below. The statement of reasons bears the same headings and section numbers as are set forth in S. 1554.

Sec. 3. DEFINITIONS

Section 3(6):

The change in the definition of the term "Alpine Decree" is submitted for clarification purposes only.

Section 3(7):

The change in the definition of the term "Orr Ditch Decree" is submitted for clarification purposes only.

Section 3(8):

The change in the definition of the term "Orr Ditch Court" is intended to make it clear that the court having continuous jurisdiction over the Orr Ditch Decree is the United States District Court for the District of Nevada.

Section 3(9):

The deletion from the definition of the term "Truckee River Agreement" is intended to eliminate unnecessary language.

Section 3(14):

The change in the definition of the term "Federal Water Master" reflects the change in the definitions of the terms "Orr Ditch Court" and "Orr Ditch Decree".

Section 3(16)

The change in the definition of the term "Truckee River General Electric Court" is intended to make it clear that the court having continuous jurisdiction over the Truckee River General Electric Decree is the United States District Court for the Eastern District of California.

TITLE I - INTERSTATE WATER APPORTIONMENT PROVISIONS

Sierra Pacific Power Company adopts the language agreed to by Nevada, California and the Pyramid Lake Tribe.

TITLE II - TRUCKEE RIVER WATER SUPPLY MANAGEMENT

The change in the title of TITLE II is intended to make the title more consistent with the specific provisions of Title II which involve overall management of the Truckee River and Truckee River Reservoirs.

Section 201: Implementation of Water Supply Agreement

The change in the title of Section 201 is intended to make the title more consistent with the specific provisions of Title II which involve overall management of the Truckee River and Truckee River Reservoirs.

Section 201(a)(2) and Section 201(a)(4):

Language should be included concerning the fact that certain rights under the Orr Ditch Decree and the Truckee River General Electric Decree are being voluntarily waived in the Preliminary Settlement Agreement. However, it appears to Sierra Pacific that the appropriate place for that language is in Section 201(a)(4) rather than in Section 201(a)(2).

Section 202: Modification of Truckee River Diversion Facilities.

The change in the title of this section is intended to better reflect the substance of the provision which is proposed. The section is modified into two sections, one providing for rehabilitation and betterment and the other authorizing an appropriation.

(a) Rehabilitation and Betterment.

This change is intended to provide for projects for the rehabilitation and betterment of existing Truckee River water diversion facilities, in order to improve the efficiencies of those water diversion facilities. Improvement of the efficiencies of those facilities will aid in providing the water supply required by western Nevada and for the recovery of the cui-ui and Lahontan cutthroat trout. Moreover, the Operating Agreement may require that the Truckee River system be operated with a precision which requires efficiencies beyond the financial ability of private entities and other local government to achieve. Therefore, the Secretary should be authorized to assist with the improvements to such facilities.

(b) Authorization of Appropriation --

There should be an authorization to appropriate such funds as are necessary to implement the rehabilitation and betterment of Truckee River diversion facilities.

New Section 208: Administrative Provisions:

(a) The Operating Agreement

This section is added to require that the Operating Agreement accomplish what all parties intend it to accomplish, i.e., (i) the Truckee River Reservoirs be operated to meet all dam safety and flood control requirements; (ii) they be operated to meet releases required by existing applicable court decrees and agreements; and (iii) they be operated to carry out the terms and conditions of the Preliminary Settlement Agreement and of the Operating Agreement itself.

(b) Submission to Orr Ditch Court

Except as to limited matters set forth in the Truckee River General Electric Decree, the Orr Ditch Decree is a comprehensive judgment which regulates the entire Truckee River system. This subsection recognizes that the Operating Agreement must be submitted to the Orr Ditch Court for approval so that the river system can continue to be operated by a single master. The Preliminary Settlement Agreement in Section 29(i) requires that the Operating Agreement be submitted to the Orr Ditch Court for approval. In addition, this amendment is intended to make it clear that once the Operating Agreement is finally approved and adopted by the Orr Ditch Court, the Truckee River Reservoirs will be operated in accordance with that approval, any other provision of the law notwithstanding, including, without limitation any requirements of the National Environmental Policy Act and the Endangered Species Act with respect to the Pyramid Lake Fishery. These provisions are necessary because substantial reliance will be placed on the water supply which is intended to be available under this settlement. To the extent that the settlement can be upset under other provisions of law, it will not be reliable. Without the ability to rely on the settlement, the parties will be in the same position they are in today.

(c) Administration by Orr Ditch Court

This additional subsection is proposed to make it clear that once the Operating Agreement is approved and adopted by the Orr Ditch Court, it will be administered by the Federal Water Master and the Orr Ditch Court. It is impractical to bifurcate the operation and administration of a single river system.

TITLE III - WETLANDS PROTECTION

SEC. 301 Authorization to Purchase Water Rights

(b) Conditions.

A new subsection 301(b)(5) is added to make it clear that the Secretary must reimburse all non-federal entities for the full operation and maintenance charges associated with any water rights purchased and not simple pay charges associated with transporting such water.

(c) Transport

This subsection is modified to reflect that new subsection 301(b)(5) takes care of reimbursement to non-federal entities with respect to operation and maintenance charges with respect to water rights purchased.

TITLE IV - CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM

SEC. 401 Transfer of Fallon Naval Air Station's Water Rights

(a) Alternative Agricultural Outlease Program

Section 401(a) is modified to make it clear that any transfer of water rights from the Fallon Naval Air Station must be made in compliance with the requirements of the water laws of the State of Nevada. This is a condition to the effectiveness of Chapter 617 of the 1989 Statutes of Nevada, authorizing water meters in Reno and Sparks.

SEC. 402 Lower Truckee River Rehabilitation Project.

A new section is proposed to require the Secretary of the Army, in consultation with and with the assistance of the Tribe, the State of Nevada and the Secretary, to develop and implement a project for the rehabilitation of the Lower Truckee River for the benefit of the Pyramid Lake Fishery. The section authorizes appropriations necessary for such a project. The State of Nevada is included as a consulting entity because the Lower Truckee River includes portions of the Truckee River system outside the boundaries of the Pyramid Lake Indian Reservation. This project is beneficial and necessary to assist in the recovery of the cui-ui and Lahontan cutthroat trout.

SEC 403 Delta Access Facilities.

A new section is proposed to require the Secretary of the Army, in consultation with and with the assistance of the Tribe and the Secretary, to develop facilities to enable to cui-ui and Lahontan cutthroat trout to obtain access through the delta at the mouth of the Lower Truckee River for spawning.

Improving access of the cui-ui and Lahontan cutthroat trout to the Lower Truckee River is essential to the recovery of the cui-ui and helpful to the recovery of the Lahontan cutthroat trout.

SEC. 404. Recovery Plans.

(a) In General

The changes to Section 404(a) are proposed because the Endangered Species Act already requires the preparation of recovery plans. A revised and updated recovery plan for the cui-ui is in preparation at this time. The suggested changes recognize that when the Act becomes effective, the new recovery plan may already be complete. If it is and it is consistent with this Act, there is no need to require another plan. The Act, as written, would mandate implementation of any recovery plan unless Congress acts to prevent implementation. The proposed change deletes that requirement and recognizes that sound policy does not mandate implementation of a recovery plan before its content is known.

(b) Criteria for Developing Plans

(1) The change proposed here is intended to make it absolutely clear that the recovery plans be subject to and consistent with any transfer of Fallon Naval Air Station water rights.

(3) This change is required to take account of the proposed additional sections 402 and 403.

(4) and (5) These deletions are required because of the new Sections 402 and 403.

(6) This change is proposed because the central purpose of the Endangered Species Act is to recover an endangered species in the most feasible manner, not necessarily in a particular ecosystem.

Section 405. Authorization for Compensation for Loss of Hydroelectric Power.

This new section is proposed to comply with one of the conditions of the Preliminary Settlement Agreement. That condition requires the United States to replace or reimburse Sierra Pacific Power Company for the reduction in the amount of hydroelectric power generated at its four run of the river hydroelectric plants on the Truckee River which will result from the implementation of the credit storage provisions of the Preliminary Settlement Agreement and Operating Agreement.

TITLE VI - MISCELLANEOUS PROVISIONS

SEC 601. Claims Settlement

(a)(1) - (1)(5).

These changes are intended to make it clear that a settlement requires dismissal of the listed actions with prejudice.

(b) This change is intended to bar any new claim of the Tribe, the United States or any other person which would upset or otherwise affect existing water rights or the existing operation of the Truckee River system as that operation may be modified by Title I of the Act, by the approved Preliminary Settlement Agreement, or by the Operating Agreement. This change will allow western Nevada to rely on the water supply and agreements authorized by this Act. Without this change, such reliance may not be justified.

(d) The changes in this section clarify the confirmation and ratification which is required by the Preliminary Settlement Agreement. In addition, a provision is added confirming any waiver of sovereign immunity given by the Tribe in connection with the Preliminary Settlement Agreement or the Operating Agreement. Without that confirmation, the ability to enforce those agreements against the Tribe may be impaired.

(e) There should be no permanent right to store water for the benefit of the Tribe and the Pyramid Lake Fishery in Prosser Reservoir.

(f) The changes are intended to make this section absolutely consistent with the requirements of Chapter 617 authorizing water meters in Reno and Sparks.

SEC. 603 EFFECTIVE DATE.

The settlement provided for in this legislation involves a carefully balanced and interrelated series of compromises by all parties. No part of the settlement, except Title III concerning the wetlands, should be effective unless the entire settlement becomes effective. These changes are consistent with that principle.

EXHIBIT A TO THE

TESTIMONY OF PHILIP G. SEGES
SENIOR VICE PRESIDENT OF WESTPAC UTILITIES, A
DIVISION OF SIERRA PACIFIC POWER COMPANY

BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON WATER AND POWER

REGARDING

S. 1554
The Truckee-Carson-Pyramid Lake Water Rights Act

Washington, D.C.
February 6, 1990

101st CONGRESS
1st SESSION

S. 1554

To ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative date, JANUARY 3), 1989

MR. REID introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, the States of California and Nevada, and other parties regarding the waters of the Truckee and Carson Rivers and Lake Tahoe in Nevada and California, to provide for enhancement of endangered and threatened species, and to preserve valuable wetlands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act".

SEC. 2. FINDINGS AND UNDERSTANDINGS.

The Congress finds that this Act and associated agreements --

(1) further the goals of the Endangered Species Act as concerns species dependent upon water from the Truckee and Carson Rivers;

(2) are consistent with Federal goals to protect valuable national wetlands from further environmental degradation and protect the habitat of many species of wildlife dependent upon these wetlands;

(3) provide for settlement of outstanding claims against the Federal Government and State governments and help to end decades of litigation;

(4) provide for the equitable apportionment of the waters of Lake Tahoe and the Truckee and Carson Rivers to promote intergovernmental cooperation and comity between the States of California and Nevada and to provide certainty to the administration of their respective water rights law;

(5) help to reduce the effects of drought conditions on the citizens of western Nevada; and

(6) provide water for the citizens of California for their use within the Carson, Tahoe, and Truckee Basins.

SEC. 3. DEFINITIONS.

For purposes of this Act --

(1) the term "Secretary" means the Secretary of the Interior;

(2) the term "Tribe" means the Pyramid Lake Paiute Tribe of Indians;

(3) the term "Preliminary Settlement Agreement" means the agreement signed by the Tribe and Sierra Pacific Power Company on May 23, 1989;

(4) the term "Operating Agreement" means the agreement described on page 24, paragraph (f) of the Preliminary Settlement Agreement;

(5) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(6) the term "Alpine Decree" means the ~~final decree of~~ *decree entered December 18, 1980 by* the United States District Court for the District of Nevada in United States of America v. Alpine Land and Reservoir Company, Civil No. D-183~~, entered December 18, 1980, and any supplements thereto~~;

(7) the term "Orr Ditch Decree" means the decree ~~of~~ *entered September 18, 1944 by* the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al. -- in Equity, Docket No. A3;

(8) the term "Orr Ditch Court" means the ~~court having~~ *United States District Court of Nevada pursuant to its* continuous jurisdiction over the Orr Ditch Decree;

(9) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River ~~and is incorporated in the Orr ditch decree;~~

(10) the term "Pyramid Lake Fishery" means the two primary species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);

(11) the term "Lake Tahoe Basin" means the drainage area naturally tributary to Lake Tahoe, including the Lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East Mount Diablo Base and Meridian;

(12) the term "Truckee River Basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that Lake, but excluding the Lake Tahoe Basin;

(13) the term "Carson River Basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(14) the term "Federal Water Master" means the person appointed by the ~~United States District~~ *Orr Ditch* Court of Nevada to carry out and enforce the provisions of the Orr Ditch Decree and the instructions and orders of the *Orr Ditch* Court pertaining to the ~~decree~~ *Orr Ditch Decree;*

(15) the term "Truckee River General Electric Decree" means the decree entered June 4, 1915 by the United States District Court for the Northern District of California in United States of America v. Truckee River General Electric Co., No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968 and is now designated No. S-643; and

(16) the term "Truckee River General Electric Court" means the ~~Court having continuing~~ *United States District Court for the Eastern District of California pursuant to its continuous* jurisdiction over the Truckee River General Electric Decree.

TITLE I -- INTERSTATE WATER APPORTIONMENT PROVISIONS

SEC. 101. THE CARSON RIVER.

~~(a) CONFIRMATION OF COURT ALLOCATION. -- The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine Decree is confirmed.~~

~~(b) FURTHER ALLOCATIONS. -- (1) In addition to the allocations referred to in subsection (a), the States of California and Nevada are further allocated sufficient water from the Carson River and its tributaries to serve beneficial uses which are not encompassed in the Alpine Decree and were initiated prior to the effective date of this Act. The total amount of water allocated by this subsection shall not exceed one thousand five hundred acres-feet per annum by depletion for use in California and two thousand one hundred and thirty-one acre-feet per annum by depletion for use in Nevada.~~

~~(2) RIGHT TO COMPENSATION FOR DISCONTINUANCE. -- If all or any portion of the effluent imported from the Lake Tahoe Basin into the watershed of the Carson River in California on or after the effective date of this Act is discontinued by reason of the disposal of such effluent, including underground disposal, within the Truckee River Basin or the Lake Tahoe Basin, the allocation to California of the waters of the Carson River and its tributaries for use in California shall be augmented by an amount of water which will compensate California for any such discontinuance: Provided, That any such augmentation shall be for use only on lands to which rights decreed by the Alpine Decree are appurtenant: Provided further, That nothing in this Act shall be construed to prohibit the continued use of all or any portion of such effluent on lands within California.~~

~~(c) APPLICATION OF STATE LAWS. -- Nothing in this section shall preclude application of the laws of the States relating to abandonment or forfeiture of water rights for nonuse.~~

~~(d) VOLUNTARY INTERSTATE TRANSFERS. -- The States of California and Nevada, the Tribe, and the Secretary may negotiate an agreement permitting the voluntary interstate transfer of water or water rights for use within the Carson River Basin. Any such agreement shall, prior to implementation, first be approved by the appropriate water right administration authority of each State pursuant to the State laws applicable to transfer of water or water rights. (e) MUNICIPAL AND INDUSTRIAL WATER USES IN NEVADA. --Nothing in this Act precludes the States of California and Nevada, the Tribe, and the Secretary from negotiating an agreement that permits the State of Nevada, agencies of the State, and private entities and individuals from constructing storage facilities within the State of Nevada on the Carson River or its tributaries that result in inundation of lands in California: Provided further, That this agreement may --~~

~~(1) recognize and confirm the right to change the beneficial use of water from irrigation to storage for municipal and industrial and related uses: Provided, That such changes are in accordance with the Alpine Decree,~~

~~(2) permit water stored under this procedure to be diverted to storage in a given year and held for use in that or subsequent years, and~~

~~(3) confirm the historic practice for operation of reservoirs identified on pages 145 and 146 of the Alpine Decree to store, release, and use quantities of water determined by the capacity of the reservoirs and the yield of the tributary basins.~~

~~(f) Nothing in this section shall be construed as modifying or terminating any court decree or as affecting the applicability of State law and procedures to the water allocated hereunder.~~ *Sierra Pacific adopts the language agreed to by Nevada, California and the Tribe.*

SEC. 102. THE LAKE TAHOE BASIN.

~~(a) ANNUAL GROSS DIVERSION TOTALS. — The total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in the basin shall not exceed thirty-four thousand acre-feet annually, of which —~~

~~(1) twenty-three thousand acre-feet annually are allocated to the State of California for use within the Lake Tahoe Basin; and~~

~~(2) eleven thousand acre-feet annually are allocated to the State of Nevada for use within the Lake Tahoe Basin.~~

~~After use of the water allocated in this subsection such water may be exported from the Lake Tahoe Basin or reused.~~

~~(b) DETERMINATION OF GROSS DIVERSION. — The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement on the manner in which the gross diversion amounts under section (a) will be determined. The agreement shall include the following provisions:~~

~~(1) Water diverted and used to make snow shall not count against the gross diversion allocation of either California or Nevada unless and to the extent that the snow is produced for use outside the basin.~~

~~(2) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's or Nevada's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per annum.~~

~~(c) TRANSBASIN DIVERSIONS. — (1) The transbasin diversions from the Lake Tahoe Basin in Nevada and California identified in paragraph (2) below, may be continued, to the extent that such diversions are recognized as vested or permitted rights under the laws of the State where each diversion is made. Unless otherwise provided in this section, such diversions are in addition to the other allocations made by this section.~~

~~(2) The transbasin diversions referred to in paragraph (1) above are —~~

~~(A) the diversion of a maximum of three thousand acre-feet per annum from Marlette Lake for use in Nevada;~~

~~(B) the diversion of a maximum of five hundred and sixty-one acre-feet per annum from Lake Tahoe for use in Nevada, except that such diversion shall count against the allocation to Nevada made by this section;~~

~~(C) the diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and~~

~~(D) the diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.~~

~~(3) The transbasin diversions identified in paragraph (2) may be transferred, for use in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or permitted. Water made available for use within the basin as a result of any such transfer shall not count against the allocations made by this section, and such water may be depleted.~~

~~(d) EFFECT OF ALLOCATION OF CERTAIN WATER. — (1) Water imported from any source outside the Lake Tahoe basin shall not count against the allocation made by this section but shall count against the allocation, if applicable, of the basin of origin.~~

~~(2) Water diverted or extracted in one State for use in the other shall count against the allocation under this section of the State in which the water is used.~~ *Sierra Pacific adopts the language agreed to by Nevada, California and the Tribe.*

SEC. 103. THE TRUCKEE RIVER.

~~The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement allocating the waters of the Truckee River basin between California, Nevada, and the Tribe. The allocation of water to California under this section shall not form the basis for additional claims of water from any water right~~

~~holders by the Tribe under the Endangered Species Act~~ *Sierra Pacific adopts the language agreed to by Nevada, California and the Tribe.*

SEC. 104. COMPLIANCE WITH INTERSTATE ALLOCATIONS.

~~The States of California and Nevada, the Tribe, and the Secretary shall negotiate an agreement for administering the allocations made under this title~~ *Sierra Pacific adopts the language agreed to by Nevada, California and the Tribe.*

SEC. 105. FORFEITURE OR ABANDONMENT NOT TO AFFECT ALLOCATIONS.

~~The forfeiture for nonuse or abandonment of water rights under the applicable law of each State shall not affect the allocations to each State made by this title~~ *Sierra Pacific adopts the language agreed to by Nevada, California and the Tribe.*

TITLE II -- TRUCKEE RIVER ~~WATER SUPPLY~~ MANAGEMENT

SEC. 201. IMPLEMENTATION OF ~~WATER SUPPLY AGREEMENT~~ *AGREEMENTS*.

(a) The Secretary shall enter into such contracts and take such actions as are required to carry out the terms and provisions of the Preliminary Settlement Agreement and the Operating Agreement, including, without limitation, contracts for the use of space in Truckee River Reservoirs for purposes of storing and exchanging water, *Provided,* That --

(1) California, Nevada, the Tribe, Sierra Pacific Power Company, and the United States have formally approved the Operating Agreement;

(2) the Orr Ditch Court and Truckee River General Electric Court have approved any proposed modifications in river operations, including storage and exchange of water, that would modify any provision in the Orr Ditch Decree or the Truckee River General Electric Decree~~, except for those rights that are voluntarily relinquished by the parties to the Operating Agreement~~;

(3) all applicable dam safety and flood control requirements are met;-and

(4) all storage and releases required to satisfy the rights set forth in the Orr Ditch Decree and the Truckee River General Electric Decree are met, *except for those rights that are voluntarily waived in the Preliminary Settlement Agreement*.

SEC. 202. ~~MODIFICATION~~ *REHABILITATION AND BETTERMENT* OF TRUCKEE RIVER DIVERSION FACILITIES.

~~Such funds as may be required to permit the Secretary, in consultation with the State of Nevada and with the approval of affected water rights owners, to modify existing Truckee River diversion facilities and operations to the extent necessary to ensure that implementation of the Preliminary Settlement and the Operating Agreement does not impair or~~

~~diminish any water rights on the Truckee River, are hereby authorized.~~ *(a) Rehabilitation And Betterment - - The Secretary, in consultation with the State of Nevada and with affected water rights holders, shall develop and implement projects for the rehabilitation and betterment of existing Truckee River water diversion facilities, in order to improve the efficiencies of those water diversion facilities.*

(b) Authorization of Appropriation - - There are hereby authorized to be appropriated such funds as are necessary to implement the rehabilitation and betterment of Truckee River diversion facilities described in subsection (a).

SEC. 203. ADMINISTRATIVE PROVISIONS

(a) The Operating Agreement - - Notwithstanding any other provision of law, the Operating Agreement shall state that the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Creek Reservoir and Stampede Reservoir shall be operated to (1) satisfy all applicable dam safety and flood control requirements; (2) provide storage and make releases as required by the Orr Ditch Decree, the Truckee River Agreement, the Truckee River General Electric Decree and the Prosser Exchange Agreement; and (3) to carry out the terms and conditions of the Preliminary Settlement Agreement and the Operating Agreement.

(b) Submission to Orr Ditch Court - - The Operating Agreement shall be submitted to the Orr Ditch Court for its approval and, when approved

and adopted by that court shall be made a part of the Orr Ditch Decree in the same manner as the Truckee River Agreement. Notwithstanding any other provision of law, after the Operating Agreement is finally approved and adopted by the Orr Ditch Court as herein provided the Truckee River Reservoirs may be operated in accordance with that approval.

(c) Administration By Orr Ditch Court - - The Operating Agreement shall be administered by the Federal Water Master and the Orr Ditch Court.

TITLE III -- WETLANDS PROTECTION

SEC. 301. AUTHORIZATION TO PURCHASE WATER RIGHTS.

(a) IN GENERAL. -- The Secretary is authorized to purchase water rights and water righted lands within the State of Nevada and to transfer, hold, resell, or otherwise dispose of such water rights and related interests to benefit Federal and State wildlife areas in the Lahontan Valley and the Fernley Sink in Nevada in accordance with the provisions of this section.

(b) CONDITIONS. -- The purchase of water rights and related interests pursuant to this Act shall be subject to the following conditions:

(1) Water rights purchased within the Newlands Irrigation Project must satisfy the eligibility criteria adopted by the Fish and Wildlife Service in connection with acquisition of water rights for the Stillwater

National Wildlife Management Area pursuant to Public Law 100-446.

(2) Water rights shall be purchased from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program.

(3) All water rights purchased shall be transferred in accordance with State law.

(4) Water rights purchased shall be managed by the Secretary through the United States Fish and Wildlife Service in cooperation with the State.

(5) The Secretary shall reimburse non-Federal entities, including but not limited to the Truckee-Carson Irrigation District, for the full operation and maintenance charges associated with the water rights purchased.

(c) TRANSPORT. -- The Secretary is authorized to -- ~~(1)~~ use existing water transport systems where available~~; and (2) reimburse non-Federal entities, including but not limited to the Truckee-Carson Irrigation District, for full operation and maintenance charges~~ in carrying out the provisions of this section.

(d) CONSTRUCTION OF THE SECTION. -- The Federal water purchase program authorized in this section is specific to this section and shall not be construed as a precedent in determining Federal responsibilities toward wildlife areas.

(e) AUTHORIZATION. -- There are hereby authorized to be appropriated to carry out the provisions of this section $4,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994.

SEC. 302. STUDY OF NATIONAL WILDLIFE REFUGE CREATION.

Within two years of the date of passage of this Act, the Secretary shall provide the Congress with recommendations concerning the transfer of certain United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for establishment of the permanent National Wildlife Refuge and Wildlife Management Area to be managed for fish and wildlife purposes in cooperation with the signatories of the 1948 Tripartite Agreement.

TITLE IV -- CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT PROGRAM

SEC. 401. TRANSFER OF FALLON NAVAL AIR STATION'S WATER RIGHTS.

(a) ALTERNATIVE AGRICULTURAL OUTLEASE PROGRAM. -- Not later than one year after the effective date of this Act, the Secretary of the Navy, in consultation with and with the assistance of the Secretary, shall develop and implement an alternative program for the lands owned by the United States within the Naval Air Station at Fallon, Nevada to replace the agricultural outlease program. The alternative program shall satisfy the Navy's dust abatement and fire safety requirements in the most water efficient manner. The water rights appurtenant to those lands which are not needed for dust abatement and fire safety requirements shall be transferred to the Pyramid Lake Indian Reservation for fishery purposes *in compliance with requirements of the water laws of the State of Nevada*.

(b) AUTHORIZATION OF APPROPRIATIONS. -- There are hereby authorized to be appropriated such funds as are necessary to develop and implement the alternative program for the Naval Air Station at Fallon, Nevada described in subsection (a).

(c) REIMBURSEMENT OF COSTS. -- The Secretary shall reimburse the Truckee-Carson Irrigation District for the full operation and maintenance charges associated with the water rights transferred pursuant to this section.

SEC. 402. *LOWER TRUCKEE RIVER REHABILITATION PROJECT.*

(a) IN GENERAL - The Secretary of the Army, in consultation with and with the assistance of the Tribe, the State of Nevada, and the Secretary, is authorized and directed to develop and implement a project for the rehabilitation of the Lower Truckee River for the benefit of the Pyramid Lake Fishery which shall be designed to -

(1) restore riparian habitat and vegetative cover;

(2) stabilize the course of the Lower Truckee River and minimize erosion damage;

(3) provide improved spawning habitat for the cui-ui to the extent deemed feasible; and

(4) provide improved spawning habitat for the Lahontan cutthroat trout to the extent deemed feasible.

(b) AUTHORIZATION OF APPROPRIATIONS - There are hereby authorized to be appropriated such funds as are necessary to implement the Lower Truckee River rehabilitation project described in subsection (a).

SEC. 403 DELTA ACCESS FACILITIES

(a) IN GENERAL - The Secretary of the Army, in consultation with and with the assistance of the Tribe and the Secretary is authorized and directed to develop facilities to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Lower Truckee River to obtain access to upstream spawning grounds.

(b) AUTHORIZATION OF APPROPRIATIONS - There are hereby authorized to be appropriated such funds as are necessary to implement the delta access facilities described in subsection (a).

SEC. 404. RECOVERY PLANS.

(a) IN GENERAL. -- Pursuant to section 4(f) of the Endangered Species Act (16 U.S.C. 1533(f)), the Secretary through the United States Fish and Wildlife Service shall revise and update plans for the recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed not later than one year after the ~~date of enactment of this Act.~~

~~If implementation has not begun within six months following the completion of the recovery plan, and Congress has not acted to the contrary, the Secretary shall proceed to implement such plans.~~ *effective date of this Act, unless prior to that date any such plan has been revised and updated by the Secretary as required by the Endangered Species Act and which revision takes account of and is consistent with the provisions of this Act.*

(b) CRITERIA FOR DEVELOPING PLANS. -- In developing the recovery plans pursuant to subsection (a), the Secretary shall --

(1) take account of ~~and include~~, *include and make the plans subject to and consistent with* the transfer of the water rights of the Naval Air Station at Fallon, Nevada described in section 401(a);

(2) take account of, ~~including~~ *include*, and make the plans subject to and consistent with the provisions of the interstate allocation described in title I, any additional agreements authorized under title I, and the Preliminary Settlement and Operating Agreements authorized under title II of this Act;

(3) *take account of, include and make the plans subject to and consistent with the Lower Truckee River Rehabilitation Project and Delta Access Project described in sections 402(a) and 403(a);*

(4) consider water quality needs in the Lower Truckee River and Pyramid Lake;

~~(4) consider possible access improvements to the mouth of the Truckee River;~~

(5) ~~consider possible access improvements to the mouth of the Truckee River;~~.

~~(6)~~ establish a schedule which is designed to achieve implementation of a recovery plan for the cui-ui ~~in the Truckee River/Pyramid Lake ecosystem;~~;

~~(7)~~*(6)* establish a schedule which is designed to achieve implementation of a recovery plan for the Lahontan cutthroat trout;

~~(8)~~*(7)* consider measures to increase the number and size of juvenile Lahontan cutthroat trout recruited to Pyramid Lake through natural reproduction where possible, or through construction or expansion of hatcheries and related facilities;

~~(9)~~*(8)* consider other actions consistent with the allocations described in sections 101, 102, and 103 of this Act and the Operating Agreement described in section 201 of this Act that might enhance recovery of the endangered and threatened species; and

~~(10) the recovery plan shall~~*(9)* not impair vested water rights.

SEC. 405. AUTHORIZATION FOR COMPENSATION FOR LOSS OF HYDROELECTRIC POWER

Notwithstanding any other provision of law, the Secretary shall replace to the extent feasible and to the extent replacement is not feasible shall reimburse Sierra Pacific Power Company for the reduction in the amount of hydroelectric power generated at its four run of the river hydroelectric plants on the Truckee River which will result from the implementation of the Preliminary Settlement Agreement and the Operating Agreement.

TITLE V -- PYRAMID LAKE DEVELOPMENT FUND

SEC. 501. PYRAMID LAKE FUND.

(a) There is hereby established with the Treasury of the United States the "Pyramid Lake Paiute Tribal Development Fund".

(b) There is authorized to be appropriated to the Pyramid Lake Paiute Tribal Development Fund $75,000,000 together with interest accruing from the effective date of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on the outstanding Federal obligations of comparable maturity. Following execution of the settlement agreements, judgments, and other appropriate final dispositions specified in section 603, the Secretary of the Treasury shall allocate and make available such moneys from the trust fund as are requested by the Tribe. Any moneys not allocated to the Tribe and remaining in the fund authorized by this section shall be invested by the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 162a). The Secretary of the Treasury shall allocate and make available such interest from the trust fund as is requested by the Tribe.

(c) All of the funds appropriated pursuant to this section shall be invested or used for economic development.

(d) Notwithstanding any provision of law, the Tribe shall have complete discretion to invest and manage the funds appropriated pursuant to this section provided that the United States shall not bear any obligation or liability regarding the investment, management or use of such funds that the Tribe elects to invest, manage or use.

TITLE VI -- MISCELLANEOUS PROVISIONS

SEC. 601. CLAIMS SETTLEMENT.

(a) This Act ~~is contingent upon settlement of the following outstanding litigation as indicated~~ *shall not take effect until* --

(1) **Pyramid Lake Paiute Tribe v. California**, Civ. S-181-378-RAR, United States District Court, Eastern District of California, ~~to be~~ *is* dismissed with prejudice;

(2) **United States v. Truckee-Carson Irrigation District**, 2987-RCB, United States District Court,

District of Nevada, including those matters asserted in the Tribe's proposed amended complaint, ~~water issues to be~~ *is* dismissed *with prejudice;*

(3) Pyramid Lake Paiute Tribe v. Lujan, Civ. S-87-1281-LKK, United States District Court, Eastern District of California, ~~to be~~ *is* dismissed *with prejudice;*

(4) all claims presented in Pyramid Lake Paiute Indian Tribe v. Department of the Navy, Civil No. R-86-155 BRT in the United States District Court for the District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit, ~~to be~~ *are* dismissed *with prejudice;* and

(5) ~~the withdrawal of~~ all pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission *are withdrawn with prejudice.*

(b) ~~The signatories under section 201 shall negotiate an agreement to insure that the matters settled by this Act and its associated agreements will not be subject to litigation subsequent to the effective date of this Act~~ *Any claim of the Tribe, the United States or any other person to alter the nature or use of existing water rights or to otherwise obtain additional water for the Tribe, the Pyramid Lake Indians Reservation, or for the Pyramid Lake Fishery and any claim of the Tribe, the United States or any other person to alter the operation of the Truckee River or Truckee River Reservoirs in a manner inconsistent with* *the operation as required by Title I of this Act, the Orr Ditch Decree, the Truckee River Agreement, the Truckee River General Electric Decree, the Preliminary Settlement Agreement, or the Operating Agreement are extinguished and barred.*

(c) On request by and in accordance with a resolution of the Business Council of the Fallon Paiute-Shoshone Tribe, the Secretary shall negotiate diligently with the Business Council: (1) to establish a program for full and prompt implementation of the provisions of Public Law 95-337 and/or alternatives thereto that are acceptable to the Fallon Tribe; and (2) to settle any outstanding claims arising from breaches of the 1906 Agreement between the Fallon Tribe and the United States, Public Law 95-337, and the Federal trust responsibility to the Fallon Tribe. Such negotiations shall commence within sixty days of the date of the Business Council resolution and shall conclude within twelve months thereafter, unless the Business Council by resolution requests an extension of the negotiations. To enable the Fallon Tribe to fully protect its interests in such negotiations, the Secretary shall provide adequate funding for technical and legal assistance under his existing authorities and programs. Neither the provisions of this Act nor the occurrence of negotiations under this section shall release or modify any obligations or liabilities of the United States under the 1906 Agreement, Public Law 95-337, or the Federal trust responsibility; or modify, extinguish, or otherwise affect any water rights appurtenant to lands within the Fallon Indian Reservation.

SEC. 602. GENERAL PROVISIONS.

(a) All of the trust land within the Pyramid Lake Indian Reservation shall be permanently held by the United States in trust for the sole use and benefit of the Tribe.

(b) The Tribe shall have the sole and exclusive right to regulate all hunting and fishing on all lands, including the bed and banks of the Truckee River and Pyramid Lake, within the boundaries of the Pyramid Lake Indian Reservation.

(c) Nothing in this Act shall limit or diminish the Federal Government's trust responsibility to any Indian tribe.

(d) The United States *on its own behalf and in its capacity as trustee to the Tribe* confirms and ratifies ~~certain~~ *the* waivers by the Tribe of ~~the~~ *any* right to object to the *use and* implementation of the water supply measures described in sections 3 and 21 of the Preliminary Settlement *Agreement, and any waivers of sovereign immunity given by the Tribe in connection with the Preliminary Settlement Agreement or the Operating* Agreement.

(e) Nothing in titles II, *III, IV, V, and VI* ~~The Secretary, the Tribe, and the State of Nevada shall negotiate an agreement determining permanent rights to store water for the benefit of the Tribe and the Pyramid Lake Fishery in Stampede and Prosser Reservoirs.~~

~~(f) Nothing in title II~~ of this Act, or in agreements made pursuant to it, *is intended to affect or* may affect any recognized and perfected right of any other party or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of ~~landowners~~ *land owners* within the Newlands ~~project~~ *Project* for delivery of the water of the Truckee River to Derby Dam and for diversion of such water at Derby Dam pursuant to the Orr Ditch Decree or any applicable regulations approved by a court of competent jurisdiction or other legal basis. *Provided further,* That the Orr Ditch Court and the *Federal* Water Master, pursuant to the administrative provisions of the Orr Ditch Decree, including the Truckee River Agreement, incorporated and made part thereof, may ensure that all water rights of the Truckee River are not impaired or diminished by this Act or any agreements made pursuant to this Act, except with respect to the interstate allocation of water to California or the Tahoe Basin: *Provided further,* That nothing in this Act or any agreements made pursuant to it will diminish, impair, or abrogate the jurisdiction or eliminate the need for required approvals of the *Nevada* State ~~engineer~~ *Engineer.*

SEC. 603. EFFECTIVE DATE.

~~The~~ *In addition to other conditions on effectiveness of this Act set forth in this Act, the* provisions of titles *I --Interstate Water Apportionment,* II -- Water Supply, *IV --Cui-Ui and Lahontan Cutthroat Trout Enhancement Program,* V --Pyramid Lake Development Fund, and VI --

Miscellaneous Provisions, ~~and section 401 -- Transfer of Fallon Naval Air Station's Water Rights of title IV~~ of this Act shall not take effect until: ~~the agreements required under title II are in effect, the funds authorized under title V have been appropriated,~~

(1) the Preliminary Settlement Agreement and the Operating Agreement described in Section 201 become effective;

(2) the outstanding claims described in ~~section~~ *Section* 601(a) have been dismissed~~,~~*;*

(3) the Orr Ditch Court and the Truckee River General Electric Court have approved any provisions in the Preliminary Settlement Agreement and the Operating Agreement described in ~~section~~ *Section* 201 which affect the Orr Ditch Decree ~~,~~ and *the Truckee River General Electric Decree; and*

(4) the Secretary, the State of Nevada, the Tribe, ~~the~~ Sierra Pacific Power Company, and the Cities of Reno and Sparks ~~enter into an agreement certifying that all necessary preconditions for the settlement have been satisfied and provide for the implementation of the settlement~~, *have entered into an agreement which:*

(i) certifies that all matters required to be settled by this Act and its associated agreements have been settled and that all preconditions to such settlement have been satisfied; and

(ii) sets forth such waivers of sovereign immunity by the Tribe with respect to actions brought to enforce its obligations under the agreement required by this section, this Act and all associated agreements.

National Audubon Society

NATIONAL CAPITAL OFFICE 801 PENNSYLVANIA AVENUE, S.E. WASHINGTON, D.C. 20003 (202) 547-9009

TESTIMONY OF CYNTHIA LENHART
WILDLIFE POLICY SPECIALIST
NATIONAL AUDUBON SOCIETY

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON
WATER AND POWER

CONCERNING S.1554
THE TRUCKEE-CARSON-PYRAMID LAKE
WATER RIGHTS SETTLEMENT ACT

ON BEHALF OF

NATIONAL AUDUBON SOCIETY
THE WILDERNESS SOCIETY

FEBRUARY 6, 1990

100% Recycled Paper

The National Audubon Society, a conservation organization with over half a million members, is pleased to provide its comments on S.1554, the "Truckee - Carson-Pyramid Lake Water Rights Settlement Act". These comments are also submitted on behalf of The Wilderness Society. Both our organizations have a strong commitment to promoting the protection of rare species and their habitats. We are particularly interested in this legislation because of its implications for the continued existence of an important wetland ecosystem and several federally-listed fish species.

Nevada is one of the driest states in the nation, not the kind of place normally associated with wildlife plenitude and diversity. Yet the interior closed drainage system of the Great Basin provides an array of playa lakes and shallow wetlands, rich in invertebrates essential as food for migrating and nesting waterfowl.

Nevada has lost over 85 percent of its wetlands in this century. The Lahontan Valley wetlands, located at the terminus of the Carson River, represent the most valuable wetland ecosystem left in the state. The significance of this ecosystem, however, goes well beyond state borders. The area is now regarded as internationally significant for the role it plays in harboring migratory bird populations that are important to many countries in the Western Hemisphere. The Stillwater Wildlife Management Area, which encompasses a large part of the wetlands in the Lahontan Valley, has been recently nominated as a wetland of international importance under the RAMSAR Convention.

The Valley's wetlands are a critical link in the chain of the Pacific flyway. Over 410,000 ducks, 28,000 geese, and 14,000 swans have been observed using the area during spring and fall migrations. Up to 50 percent of the Pacific flyway fall canvasback duck population migrates through each year. In addition, the area provides habitat for over 250,000 migrating shorebirds, with many species remaining to nest. Peak migrant populations are as follows: 150,000 long- billed dowitchers; 60,000 Wilson's phalaropes; 50,000 western sandpipers; 25,000 American avocets. Because of its importance to these and other species, the area has been dedicated as a Western Hemisphere Shorebird Reserve, one of only four such sites in the United States.

The wetlands also notably support the largest breeding colonies in North America of two uncommon species -- the white-faced ibis, under consideration for federal listing as threatened, and the American white pelican, which nests on Anaho Island in Pyramid Lake and journeys to the Lahontan valley wetlands to feed.

Unfortunately this wetland ecosystem, upon which so many species depend, is dying. Inadequate water supply caused by excessive upstream diversions has been exacerbated by recent drought. The wetlands continue to shrink in size and are threatened by contamination from elements such as arsenic, boron, and selenium. The continued viability of the system will be further diminished when operating criteria for the Newlands irrigation project are fully implemented, resulting in even less water flow to the wetlands.

The legislation now before the Committee can help turn this scenario around, and will in large part determine the fate of this internationally important wetland ecosystem. Previous efforts to address the problems of the Truckee-Carson-Pyramid Lake system have not considered the wetlands as an integral part of that system. We are pleased that Senator Reid has provided some measures of protection in his bill. We are, however, concerned that these measures may not be adequate to ensure the long-term survival of the wetland ecosystem. The following are our suggestions for strengthening this legislation, in order to ensure the Lahontan Valley its place on the world's list of important wildlife habitats.

WETLANDS PROTECTION

Authorization to Purchase Water Rights

Section 301(a) should be revised to include tribal wildlife areas among those for which water rights purchases can be made, with the consent of the Fallon Paiute-Shoshone Tribe.

Eligibility criteria for these purchases (Section 301(b)(1)) should not be based solely on those initially adopted by the Fish and Wildlife Service (FWS), based on evidence of irrigation during just a single season. A more comprehensive standard for long-term acquisition purposes is needed.

Section 301(b)(2) should be clarified to specify purposes of the water purchase program, including but not limited to resolving toxic contamination of the wetlands and improving project efficiencies.

Section 301(c)(2) should include reference to other costs of the acquisition program, such as foregone property tax receipts, that must be reimbursed. We suggest that the reimbursement contracts reflecting all costs be authorized on a long-term basis, with lump-sum payments at the time of water rights purchase. We support the Environmental Defense Fund (EDF) proposal to replace actual federal reimbursements to the Truckee-Carson Irrigation District (TCID) by credits for

TCID's payments to the Bureau of Reclamation. This arrangement seems appropriate in light of the Bureau's "new mission", and eliminates the need to extract additional funding for such reimbursements from an already stretched-to-the-limit FWS budget.

The $16 million authorized in Section 301(e) should be regarded as partial mitigation funding for the adverse effects of the final OCAP, which will result in an estimated loss of 14,000 to 18,000 wetland acres, according to FWS. Along with funds already appropriated, it is estimated that $16 million can provide water to sustain just 6,000 acres of wetland habitat.

It should be noted that a number of ongoing state and private initiatives have the potential to be of significant help in the effort to save the Lahontan Valley wetlands. First, the Nevada legislature has approved up to $9 million in state bonding authorities for water rights acquisition. The fate of this initiative is now up to the voters. Secondly, a number of conservation organizations, including The Nature Conservancy and the Nevada Waterfowl Association, have spurred private sector contributions which have effected the first water rights purchases for the wetlands. And finally, private sector upstream development interests may, at some point, finance the use of reclaimed effluent for wetlands enhancement, if research concludes that such an approach is viable.

A 1989 GAO Report regarding incompatible uses on national wildlife refuges estimated that about $50 million is needed to acquire water rights for the wetlands, if they are to be adequately protected. Given the need for more funds to fully mitigate for the projected OCAP wetland losses, Congress should authorize a total of $32 million beginning in 1991 for water rights purchases (spread over a four-year period). We recommend that the extra $16 million be matched on a dollar-for-dollar basis by the state and private sector. The total $48 million program would come closer to meeting FWS objectives of supporting approximately 24,200 acres of wetland habitat at Stillwater and Carson Lake. The incentive program would spur state and private initiatives, and would help to meet more fully outstanding federal mitigation responsibilities.

Study of National Wildlife Refuge Creation

We strongly support the development of a plan to establish an expanded national wildlife refuge in the Lahontan Valley, with the transfer of certain Bureau lands. Given the international significance of this area, and the federal government's responsibilities under various treaties and international agreements to protect this habitat, it makes sense to provide it with protections available under federal refuge law. We suggest that this study include the Stillwater Wildlife Management Area (WMA), Carson Lake, and the Fernley WMA, and that cooperative management responsibilities be limited to FWS and the Nevada Department of Wildlife.

In addition, we propose that the Secretary be required to redefine the boundaries of Anaho Island NWR, which has become further exposed with each drop in the level of Pyramid Lake. The exposed lands now provide prime habitat for the colonial nesting birds dependent on the Island. We recommend that lands above the water line be administered as part of the National Wildlife Refuge System.

CUI-UI AND LAHONTAN CUTTHROAT TROUT ENHANCEMENT

Transfer of Fallon Naval Air Station Water Rights

We support the development of more water efficient uses at the Fallon Naval Air Station, with the transfer of conserved water rights to Pyramid Lake. We note, however, according to EDF calculations, that this will result in a further reduction of approximately 1,800 acre-feet annually in incidental inflows to the Lahontan wetlands -- almost equal to the gains from water rights to be purchased according to FY 1989 appropriations guidance. We propose, therefore, that in Section 401(b) an additional $2 million be authorized to purchase water rights to offset this loss.

Recovery Plans

We support the requirement to revise and update recovery plans for the cui-ui and Lahontan cutthroat trout. We recognize the expensive nature of prescribed habitat improvements such as lower Truckee River rehabilitation, improved Delta and upriver access, but urge their expeditious implementation.

MISCELLANEOUS PROVISIONS

Section 602 should include a provision stating that any activities undertaken pursuant to this legislation shall be consistent with, and shall not create an exemption from, the requirements of applicable federal environmental laws, including but not limited to the National Environmental Policy Act, Clean Water Act, Migratory Bird Treaty Act, Endangered Species Act, and the National Wildlife Refuge Administration Act.

In conclusion, we are grateful that a forum has been provided to address the environmental crisis that has developed in the Truckee-Carson-Pyramid Lake-Lahontan Valley system. We think it appropriate, however, to consider the underlying cause of the crisis: the Newlands Project.

Why should Congress continue to authorize the subsidy of a project which perpetuates deformed birds and the endangered status of certain species?

- The Project's water diversions are the main obstacle to the recovery of the cui-ui.
- The Project's water diversions are drying up and contaminating one of the most important wetlands in the Western Hemisphere.
- The economic contribution of the Project is minimal -- an estimated 10 percent of Churchill County's annual economic product.
- The federal government is paying twice -- first for the subsidies to Project farmers, and second for the higher price of water rights which are based on the subsidies.
- Action in the courts and within the Department of Interior promises to change the nature of the Project operation in the near future.
- The Bureau continues to operate under a "temporary" agreement with Truckee-Carson Irrigation District, in effect since 1984.

This legislation, as drafted, ignores the cause of the illness, and focuses on the symptoms. We believe it is time for the federal government to evaluate all of its options with respect to the Newlands Project. To facilitate this evaluation, we propose that Congress direct the Secretary to contract with the National Academy of Sciences to conduct a thorough review of the Newlands Project.

We thank the Committee for this opportunity to provide our views.

TO: SENATOR BILL BRADLEY, CHAIRMAN
SUBCOMMITTEE WATER AND POWER

RE: S 1554

FROM: CARSON-TRUCKEE WATER CONSERVANCY DISTRICT

BY: HAROLD JACOBSEN, MEMBER OF THE BOARD OF DIRECTORS

Mr. Chairman, my name is Harold Jacobsen and I represent the Carson-Truckee Water Conservancy District. I am a member of the Board of Directors of the District.

In 1951, a Water Users Committee was formed and became known as the Truckee River Water Users Committee. This committee's purpose was to improve the water conditions on the Truckee and Carson Rivers by eliminating as far as economically feasible the deficiency in water supply on both rivers and to endeavor to reduce flooding. The principal objectives of the committee were to:

1. Develop additional storage to supplement the existing storage in the Truckee River basin in order to eliminate water deficiencies which occurred during drought years and to firm the existing water supply. Such storage was to serve irrigation in the Truckee Meadows and the Newlands Project, to reduce flooding along the river and for hydroelectric power.

2. Develop storage on the Carson River basin for the benefit of Carson Valley lands and other lands along the Carson River which had no significant storage and which had less than a 60% water supply during dry years. This area had a water shortage practically every year. The proposed storage on the Carson River is to provide flood protection, improved sanitation conditions, hydroelectric power and development of fish and wildlife resources, in addition to the proposed irrigation benefits.

3. Provide drainage in the Carson Valley and Truckee Meadows.

Between 1950 and 1955, the Water Users Committee developed plans for the proposed development of a joint Truckee River and Carson River project. During this time, at the urging of the Water Users Committee, the Bureau became involved in planning and sponsoring the project as a reclamation project to be built by the Bureau with money from the Reclamation Fund. The Committee and the Bureau worked together on a cooperative basis to formulate the plan that ultimately was submitted to Congress in 1955 as House Document 181.

Numerous meetings were held with various members of the Bureau, the Department of the Interior, and members of Congress for the purpose of working out details and problems relating to the project and coordinating the plans of the Bureau and the Committee. House Document 181 was supported by all and became the Washoe Project Act 43, U.S.C. 614.

The principal purpose of the Washoe Project was to provide up-stream storage on the Truckee and Carson Rivers to be carried over for relief during drought periods that periodically occurred in the drainage area of both rivers. The importance of flood control became evident as a second serious flood occurred just prior to Christmas in 1955. The 1955 flood resulted in a flow of 23,000 cfs through the Reno-Sparks area. In addition, water covered much of the land in the Glendale area which is east of the City of Sparks due to a restriction in river flow at Vista (a point east of Sparks on the Truckee

River) such that the amount of water that passed through the channel was limited.

The Washoe Project was authorized by Congress August 1, 1956. The major elements of the Project were two dams and reservoirs: Stampede Dam and Reservoir on the Little Truckee, and Watasheauma Dam and Reservoir on the Carson River, with hydroelectric plants at each site. In the Truckee basin two locations were selected primarily for flood protection and are known as Prosser Creek and Martis Creek which are tributaries to the Truckee River.

When the project works were completed, a special water district would operate and maintain the facilities. The surplus water stored in these reservoirs was to be sold by such Districts to various water users. The money received from the sale of water and revenue from the power generation was to be used to reimburse the United States for construction of the facilities. A portion of the costs of the project for flood control was to be non-reimbursable. Fish and wildlife facilities were minor and incidental to the main purposes. The Washoe Project limited the wildlife and fishery expenditures to two million dollars.

Following the approval of the Washoe Project by Congress in 1956, the Water Users Committee, in response to the request of the Bureau, received legislation enabling the establishment during the 1957 Session with the adoption of the Water Conservancy Act (Nevada Revised Statute 541.030). This District would directly benefit residents of the state by providing adequate supplies of water for domestic, municipal and industrial use.

On January 9, 1958, the Committee caused the formation of the District following the 1957 legislative act. The District was formed under the Act on January 27, 1958. The first meeting of the District was held in the First Judicial Court in Carson City, Nevada.

The main objective of this group was to negotiate a repayment contract with the United States for the construction of the Washoe Project. This District has existed continuously since its formation in 1958.

The District meets on a monthly basis. The main objective at present is to contract and be responsible for the distribution of the water supply from Stampede Reservoir for the public's benefit as set forth in the Washoe Project Act.

As the District was being formed, those involved in political subdivisions within the boundaries of the District were aware of the projected anticipated population growth; and it appeared that additional supplies of water would be needed for municipal and industrial usage. The original feasibility report of 1954 prepared by the Bureau of Reclamation did not specifically state that municipal and industrial water uses would be involved. It was concluded that the Bureau of Reclamation be requested to study the problem and make provisions for municipal and industrial uses. This request was also made to the Secretary of the Interior, U.S. Senators, George Malone and Alan Bible and Congressman Walter Baring. This request was initiated by the Board of Directors of the Carson-Truckee Water Conservation

District on August 9, 1958. The project Engineer and Project Manager for the Bureau of Reclamation were present at the meeting and indicated the study would be made.

Shortly after the above meeting, the California-Nevada Interstate Compact Commission advised that available water should be allocated to future domestic and municipal and industrial uses, rather than irrigation.

The District late in 1958 decided to poll the various communities in the District to ascertain the extent of the need. The following resulted:

Reno-Sparks	10,000 AF
Minden-Gardnerville	1,500 "
Carson City	4,000 "
North American	1,100 "
Curtis Wright	5,000 "
	21,600 AF

In 1959-1960, the reefs in the Truckee River east of Vista were removed, partially to provide a 6,000 cfs channel capacity. Following a public hearing in December 1959, it was planned to request a flood control dam or Martis Creek, a tributary of the Truckee River, with a storage capacity of 15,000 AF. In 1960, Prosser dam was to be built, for flood control purposes.

Carson-Truckee Water Conservancy District advised Vernon J. Hansen, then the Bureau of Reclamation Project Manager, 24,600 AF of water annually should be reserved for municipal and industrial use. The District made the original request in January 1959, and it required 15 months before the Bureau responded to that request.

The original plan was to build Watashoamu REservoir first. The plan was to be completed in 1959, with construction possible during 1961-62. The definite plan report for the entire project was to be completed in late 1961. It was necessary to form the CArson Sub Conservancy District and to obtain contracts for water from users on the Upper Carson River.

In May 1961, the Carson-Truckee Water Conservancy District received information that 24,600 AF of water would be set aside for municipal and industrial uses. This reply instigated repayment contract provisions relating to the municipal and industrial water.

In June of 1962, the Bureau of Reclamation in furnishing a draft for the repayment contract, stated that the Secretary could arbitrarily reduce any water available to the District by using such water for fishery purposes. The District would not sign an open ended agreement which would allow the United States to divert the Carson-Truckee Water Conservancy District's municipal and industrial water for fish and wildlife purposes. The Carson-Truckee Water Conservancy District wanted allocations between the two uses made prior to execution of the repayment contract.

The Watasheamu project was increased in size at the request of the Carson-Truckee Water Conservancy District; however, the lact of support from local interests led to a failure in reaching necessary agreements.

Prosser flood control project was completed and placed in operation in 1962.

The Stampede situation remained unchanged during 1963. The Carson-Truckee Water Conservancy District was assured that municipal and industrial water would be allocated under the Washoe Project Act and the Water Supply Act of 1958. Further, the Carson-Truckee Water Conservancy District would continue to assume the responsibilities for operation and maintenance of the project works and the repayment for all reimbursable costs. The Carson-Truckee Water Conservancy District gave the Bureau of Reclamation this assurance, and the Bureau of Reclamation confirmed that it would proceed to construct the project without further authorization.

The Carson-Truckee Water Conservancy District approved the repayment contract on June 10, 1963, and the Bureau of Reclamation approved the construction September 6, 1963. The contract was sent to the Secretary of the Interior. The construction cost was set at $45 million, with a maximum repayment set at $22-1/2 million.

In view of the position taken by Bureaus within the Department of Interior, the contract was not ratified by the Department. A task force was organized in 1964. The matter was voted on by the electors within the boundaries of the Truckee-Carson Water Conservancy District on November 3, 1964. The project was approved. Two counties opposed the contract, Churchill and Storey.

The contract called for the Truckee-Carson Water Conservancy

District, upon completion of construction of the project, to operate and maintain the project works, exect for certain non-reimbursable fish facilities (Marble Bluff Dam and Fishery).

The fish problem caused a review of the dam size, and it was recommended that the original capacity of 125,000 AF be increased to 225,000 AF for fish flows and for a request by California for a reservation of 6,000 acre feet for municipal and industrial uses.

The Task Force issued a report in October 1964, which allocated 6,3000 AF annually from Stampede for fishery purposes, primarily to operate a fishway at Pyramid Lake.

The Task Force recommendations were:

16,900 AF for Nevada municipal and industrial use
6,300 AF for Fishery
6,000 for California municipal and industrial use

The Carson-Truckee Water Conservancy District approved this modification.

Following notification of the November 1964 election, the Bureau of Reclamation advised it would complete the final definite plan report on the basis of the Task Force Report.

The repayment contract as amended was approved on February 19, 1965. July 1965, the Carson-Truckee Water Conservancy District met with the Bureau of Reclamation to review a contract draft of July 1965. Negotiations continued and on September 9, 1965, a contract dated August 18, 1965, was adopted. It was indicated that the contract would be approved by the Secretary of the Interior in about six weeks. This had not occurred as of this date.

The Carson-Truckee Water Conservancy District was informed by the Regional Director for the Bureau of Reclamation that Stampede would be operated in accordance with the Task Force recommendations. The statement was, "It is our intention, also to incorporate into the Stampede division portion of the contract the recommendations of the Task Force as such recommendations may relate to the Washoe Project contract and provide for repayment of municipal and industrial water under the authority of the WAter Supply Act of 1958.

"Further, it is our intention, in response to the local municipal and industrial needs, urgent flood control requirements, and general interest expressed in the area, to construct the Stampede division in advance of the Watasheamu Division. Plans are being developed for Stampede Division with a gross capacity of Stampede Reservoir of 225,000 AF. Of the total, 22,000 AF of storage will be used for joint use for flood control and conservation in accordance with criteria proposed by the Corps of Engineers."

A committee was formed to set forth operating criteria and procedures for the control of the Truckee and Carson Rivers. The Task Force report was to be a guideline.

Stampede bids were opened October 4, 1966. A contract was awarded in November to the firm of Heintz and Kizer. The dam and other elements on the Truckee were completed in July 1970. The Forest Service was informed that the following construction the operation plan would provide a minimum pool of 123,000 AF and Stampede Reservoir would not be used for flow control excet for flood control emergencies. The Stampede facility has never been operated as stated to the Carson-Truckee Water Conservancy District. The Interior completely eliminated Stampede's municipal and industrial function and has operated Stampede to support fishery experiments only.

During 1970, the Martis Creek dam was contracted for. This facility was completed in 1972.

From 1973 to date the Carson-Truckee WAter Conservancy District has endeavored to have the Bureau of Reclamation operate facilities as set forth in the original authorization of the Washoe Project.

It would be of some interest to know that the original authorization allocated 2 million dollars for fish propagation. One facility, Marble Bluff Dam and Fishery, was constructed between December 28, 1973, and October 3, 1975, at a cost of 4.6 million. This does not include any costs of fish hatcheries built at the Pyramid Lake reservation.

In an effort to resolve the many problems that have arisen as the result of the foregoing negotiations and agreements the Carson-Truckee Water Conservancy District in concert with the Sierra Pacific Power Company commenced legal action in and effort to determine the municipal and industrial water use rights for the areas represented by them. Such litigation was unsuccessful.

Subsequent to the conclusion of the litigation, all parties involved with respect to Truckee River water use again sat down at the negotiating table in a effort to resolve the many issues which had been ongoing for a period of an excess of thirty (30) years.

As a result of such negotiations, agreement was reached and in 1985 hearings were held on S. 1558 which resulted in a reversal of a stand on the proposed settlement and the bill died.

It is the understanding of the Board of Directors of the Carson-Truckee Water Conservancy District that the agreements reached as the result of the most recent negotiations is the predicate for the introduction of the bill before this committee today.

The Carson-Truckee Water Conservancy District has not been a party nor was it included in the present negotiations, but would like to present its thoughts relating to the language included in S. 1554. Here are our considered beliefs and recommendations:

I. The State of Nevada and its political subdivisions have traditionally taken the stand that in matters involving water resources, the sovereign right of states to act upon and control the matters involving the issuance of the transfer of water rights should be preserved be they private, state or federally owned. We endorse this position.

II. S. 1554 contains language that will seriously erode state sovereignty in water right transfers as well as disturb existing adjudicated water rights and should be amended to overcome such objections. (See: Sec. 301; Sec. 401)

III. S. 1554 should be modified to provide for municipal and inductrial use of water stored in Stampede and Prosser Reservoir. (See: 602(e)).

IV. The cui-ui fish though presently endangered, should not be given special status to extend beyond the recovery of such species as they are treated in S. 1554. (See: Sec. 402). Pursuant to the provisions of the Endangered Species Act, 16 USC Section 1533 (C)(2)(A) "the Secretary shall conduct, at least once every five years, a review of all species included in a list of endangered or threatened species which is published pursuant to Paragraph 1 and which is in effect at the time of such review." To the knowledge of this board, a detailed review has never been made.

V. The Pyramid Lake Paiute Tribe has never been recognized as a party to or having any direct interest in the Carson River. S. 1554 should be amended (Sec. 101(d)(e)) by striking any authroity of the Pyramid Lake Paiute Tribe to enter into agreements which could modify or nullify the Alpine Decree.

VI. The Carson-Truckee Water Conservancy District Board believes that the Pyramid Lake Paiute Tribe should not be considered in the same context as the State of Nevada and California with respect to the Interstate allocations of water. (Sec. 101(d)(e); Sec. 103; Sec. 104).

VII. We respectfully request that the Carson River be included in Section 602(f) of S. 1554.

The experience and background of the Board and its members will be available to answer any questions the committee may have regarding these suggestions and requests.

Testimony of the Nevada Farm Bureau Federation
Before the Senate Energy & Natural Resources Subcommittee
On Water And Power
Regarding S. 1554, Truckee-Carson-Pyramid Lake
Water Rights Settlement Act

February 7, 1990

Nevada Farm Bureau Federation • 1300 Marietta Way • Sparks, Nevada • 89431 • (702) 358-3276

Statement of the Nevada Farm Bureau Federation
Before the Senate Energy & Natural Resources Subcommittee
On Water And Power
Regarding S. 1554, Truckee-Carson-Pyramid Lake
Water Rights Settlement Act

Nevada Farm Bureau wishes to include the following statement as part of the hearing record dealing with S. 1554, a bill which seeks to ratify and implement water settlements of the waters of the Truckee and Carson Rivers and Lake Tahoe. The bill also strives to purchase water rights to be used to preserve wetlands of the Stillwater wildlife area.

Farm Bureau policy, developed and adopted by farmer and rancher members, stands squarely in support of negotiated settlements designed to settle current litigation involving Truckee River water and water in all other natural water ways. It should be noted, however, that our organization's support is based on the settlements resulting in the conclusion of all existing litigation between all parties affected by the negotiated settlement.

Based on this concept, Senator Reid's bill, S. 1554, covers several of the parties and interest who need to be involved, but not all. In our opinion, Nevada Congressman Barbara Vucanovich's proposal, H.R 3941, does a good job of expanding on the important points of S. 1554, plus it includes all of the impacted interests and results in a more complete solution to the complex problems we have.

If all users work together cooperatively and share the burdens equally, it would seem that the work of resolving these age-old conflicts would be much easier. Solutions which only strive to serve some of the user groups, placing undue and unequal hardships on other impacted parties are the reason the problems haven't been solved already.

It's this across-the-board, all affected parties involvement included in the House version (H.R. 3941) of this legislation which prompts us to respectfully request your assistance in amending S. 1554 to conform with H.R. 3941.

We strongly support a policy of multiple use of available water, including the use of water for irrigation, shallow well water supply, recreation and wildlife habitat. In this we wish to compliment Senator Reid and Congressman Vucanovich for their work in seeking solutions which foster cooperation and multiple use of this most precious resource.

With this multiple use concept in mind, we also wish to make it known our strong conviction that all surface or subsurface water supplies in Nevada belong to the public of the state and that Nevada state water laws governing control, water rights, beneficial use, etc. shall be maintained.

We appreciate both Senator Reid and Congressman Vucanovich for including provisions in their legislative proposals which are based on this concept of states' rights regarding water.

As it pertains to the legislative initiative to procure water rights for the Stillwater wetlands, Nevada Farm Bureau supports such a program as long as those responsible for the purchase of these waters rights are treated in the same manner as an individual would be under state law -- all things being equal, with all being treated equally (as opposed to some, namely government, receiving preferential treatment). Furthermore, we maintain that the purchased water rights should remain under the "ownership" of the state of Nevada and that the "owner" be financially responsible for the operations and maintenance charges to deliver the water to the point of beneficial use.

Last, but not least, Farm Bureau believes that purchased water rights for the Stillwater wetlands should come from willing sellers and that no water district should be required to provide more than 20,000 acre feet of water. Given the fact that the general public as a whole benefits from the well-being of the Stillwater wetlands, it seems to us that no one area of Nevada should be required to carry the entire load of the corrective actions. The bottom line is that the farmers and ranchers of the Fallon area should not have to have their entire water delivery system negatively impacted or entirely scrapped.

In summary, we wish to repeat our primary suggestions that, if all users work together, cooperatively and share the burdens equally, it would seem that the work of resolving these age-old conflicts would be much easier. Solutions which only strive to serve some of the user groups, placing undue and unequal hardships on other impacted parties are the reason the problems haven't been solved already.

Again, it's this across-the-board, all affected parties involvement, which is included in the House version of this legislation which prompts us to respectfully request your assistance in amending S. 1554 to conform with the House version.

In making this request for your action we wish to acknowledge Senator Reid for his contributions and support in creating the "critical mass" to move this important and major piece of legislation to a working level here in Washington, D.C. We also wish to thank Congressman Vucanovich for her interest and participation in this overall development process.

Thank you also to Senator Bradley and members of the Water and Power Subcommittee for their assistance and attention to our input.

TESTAMONY TO BE ENTERED INTO SUBCOMMITTEE RECORD

As a member of the Pyramid Lake Tribe let me tell you that the tribal chairman has not told the people here on the reservation what he is doing. We were not given any literature. (Even similar doctored up copies of the bill last time were not made available to us.) Whatever the case, I am firmly against this proposed settlement as I see it as the first step toward termination. If we give the Sparks community water we will have no more lake. We do not get any water down to the lake but sewage waste. What will we get if and when this bill passes, two drops of water is all. There should be a hault in construction. Since there is not enough water there already STOP BUILDING. Reno wants more and still more when there's not enough. Leave us with our water and our lake, things are fine as they are. We won the Supreme Court decision - why is this still being brought up over and over. I don't see it happening on other issues once there's a Supreme Court decision. I'll tell you why - this is the typical example of government (local and federal) noticing that "Hey, we left those Indians with a valuable commodity. Let's press them and trick them into giving up this natural resource." Your own Supreme Court decided that we need so many acre feet of water per year to exist - why is that so hard to face.

Michelle McCahill

SYNERGICS, INC

Synergics Centre
191 Main Street
Annapolis, Maryland 21401
301-268-8820 FAX 301-269-1530

April 30, 1990

Mr. Tom Jensen
Senate Energy & Natural
Resources Committee
Room 364
Dirksen Senate Office Bldg.
Washington, D.C. 20510

VIA FAX 202-224-6163

Dear Mr. Jensen:

Per our discussion, please find enclosed a copy of the letter sent to each member of the Subcommittee on Water & Power.

After your trip to Nevada we welcome the opportunity to discuss with you the adverse impact that diversions of the presently available water will have upon the citizens who now rely upon the energy produced at the Lahontan Dam, as well as the impact upon us as the developer.

I look forward to hearing from you.

Very truly yours,

Michael P. Zell

Michael P. Zell
Vice President &
General Counsel

MPZ:1

SYNERGICS, INC

Synergics Centre
191 Main Street
Annapolis, Maryland 21401
301-268-8820 FAX 301-269-1530

April 30, 1990

The Honorable Bill Bradley
Hart Building, Room 731
2nd & C Streets, N.E.
Washington, D.C. 20510

RE: S-1554

Dear Senator Bradley:

It is our understanding that your Committee is presently taking evidence prior to the marking up of the above-captioned Bill. We hope the enclosed information will be considered during your mark up.

Synergics, Inc. and its subsidiary, Lahontan Hydropower, Inc. are the developers and operators of the Lahontan Hydro Project which we believe will be adversely affected by the proposed legislation.

At present, this facility generates approximately 12,650 Mw of electricity per year using waters drawn from Lahontan Dam. Potential diversion of water under the proposed legislation will cause the loss of approximately 567,626 kilowatt hours of energy which would need to be replaced by other energy sources including the consumption of non-renewable energy resources. Our estimates show the loss of energy equivalent to 1100 barrels of oil.

The loss of generation causes a significant adverse impact upon us, as the developers of this project. The diversion by our estimate would result in lost revenues of approximately $45,000, annually, using conservative estimates.

The possible adverse impact upon this hydroelectric facility could in turn adversely affect the citizens presently receiving power and to a greater extent cause added air pollution through the burning of fossil fuels to replace the lost electric power.

To that end, Synergics and its subsidiary Lahontan Hydropower, believe that the language attached hereto as Appendix A would be useful in protecting this valuable source of renewable energy as well as protecting the citizens from a potential loss of energy due to the diversion of water from the Truckee Carson Irrigation District.

We would happy to make any of our technical experts available to discuss this project with you and the adverse affects which might occur from diversion of water from the project.

I look forward to hearing from you.

Very truly yours,

Michael P. Zell
Vice President &
General Counsel

MPZ:l
cc: To All Members - Water & Power Subcommittee
Mr. Tom Jensen

APPENDIX I

Suggested Additions to S1554

Page 1 - At the end of the first paragraph ... for other purposes, including the ability to continue the generation of hydroelectric power at present levels.

Page 14 - Under (b) - Conditions - add Section 5

> (5) Any water rights which may be purchased will be done so as to encourage the continued generation of hydroelectric power at present levels or the Secretary may reimburse any parties damaged by the loss of hydroelectric production upon appropriate proof of lost revenues.

Page 17 - Section 401(b) - ...The Secretary shall reimburse the Truckee-Carson Irrigation District and the developer of the Lahontan Dam for the full operation and maintenance charges associated with water rights transferred pursuant to this section, and the loss of revenues from decreased hydroelectric generation at the Lahontan Dam.

FACTS

A Coalition for Fair Allocation of Carson and Truckee Systems

(702) 423-5136
Fax: 423-0717

190 W. First St.
Fallon, Nevada
89406

February 23, 1990

Mr. Tom Jensen, Chief Counsel
Sub-committee on Water and Power
306 Dirksen Senate Office Building
1st & Constitution
Washington D.C. 20510

Dear Mr. Jensen,

Please find behind this cover letter our comments for the record in response to selected testimonies presented to the Sub-committee at the hearing of 6 February 1990.

There is in two weeks simply not enough time to effectively analyse and make comments on each point presented to the Sub-committee; it is our hope to continue to communicate our concerns with you during the period until the next Sub-committee hearing and especially during your visits to this area.

I look forward to your March 1 visit.

Sincerely,

Jim Bentley

Jim Bentley, Coordinator

COALITION for FAIR ALLOCATION OF CARSON AND TRUCKEE SYSTEMS

COMMENTS ON SELECTED TESTIMONY

S1554 HEARING - FEBRUARY 6, 1990

TESTIMONY

Senator Bryan, page 2, stated that $8,000,000 of Nevada money was available for wetlands acguisitions.

COMMENT

Senator Bryan, as Nevada's Governor, did indeed approve Senate Bill 451, authorizing an $8,000,000 bond issue. However, our understanding of that measure is that it was to provide matching funds for capital improvement projects. This is the $8,000,000 we proposed as the Nevada match in the Nevada Settlement Fund.

In 1989, the Nevada Legislature passed and referred to the voters in the 1990 general election a proposal for a State Park bond issue. Among other things, that proposal would amend the 1983 bond authorization to provide more than $4,000,000 for wetland water right acguisitions under certain conditions. (See Section 7 of the 1989 Act.)

In addition, the 1989 Act allocates $5,000,000 for purchase of wetlands water. (See Section 2 (2)(c) of the 1989 Act.)

Copies of the 1983 and 1989 Acts are attached.

TESTIMONY

Both Mr. Hartman, page 3 and page 12, and Mr. Sayre, pages 5 and 6, stated that an Environmental Impact Statement should be prepared.

COMMENT

We asked for some protective provisions to minimize adverse environmental impacts. In fact we feel that an EIS is the best approach.

A comprehensive EIS could best balance the need for wetlands water and the need to preserve one of Nevada's best greenbelt areas in accordance with good land use planning. It could best address the concerns of Churchill and Lyon Counties concerning recreational water and underground water quality and recharge for rural domestic water supply. It could best plan the survival of a viable reclamation project. And it could offer, better than any other method, proposals for mitigating adverse impacts.

TESTIMONY

Mr. Hartman, page 14, states that it should be in the discretion of the Secretary as to the appropriate amount to reimburse TCID for operation and maintenance charges.

COMMENT

If the Newlands Project is to remain viable, TCID must be reimbursed for annual O & M costs for lands retired.

The vast majority of TCID's annual costs are fixed. They must retain most employees on an annual basis in order to have capable people. This includes office staff, engineering staff, shop crew, good equipment operators, and ditchriders.

Present O & M costs are paid on 73,000 water right acres. If that broad-based income is reduced it results in a higher cost burden on the remaining water right holders. the Bureau of Reclamation has determined that the farmers are now paying as much as their financial ability permits.

So there would be nothing fair about any reduction in TCID income, thereby imposing additional O & M burdens on less acreage and fewer farmers. Additionally, all parties involved recognize and support continuing full O & M payments on retired lands.

Further, under Nevada water law, the State Engineer can not approve any water right transfers which impose a higher cost burden on the remaining water users.

TESTIMONY

Mr. Hartman, page 23, recognizes a matter of great concern on the Newlands Project. That is the proposed Reno-Sparks effluent diversion which Mr. Hartman believes should be addressed in the Bill.

COMMENT

This proposal has been lurking in the wings for several months. We have been aware of it, and it has been pointed out in some detail by Cryil Schank, Chairman, Churchill County Board of Commissioners. It has also been pointed out in the Town of

Fernley statement. In addition to wetlands water purchases, if effluent replacement water depended upon reduction of irrigation upon the Newlands Project, it would have a catastrophic environmental effect. It would be a repeat of the decimation of the Owens Valley when the City of Los Angeles bought the water.

This issue should be addressed in S. 1554; the Bill should clearly indicate, without foreclosing the possibility of this proposed effluent diversion, that no purchase of Newlands Project water rights will be made for exchange or replacement of that effluent.

TESTIMONY

Mr. Sayre, page 4, states that the Bill requires the settlement of five on-going lawsuits.

COMMENT

The Bill settles only one piece of litigation. The rest are dismissed without prejudice.

TESTIMONY

Constance Harriman, page 2, states that it would take 50,000 to 60,000 acre feet annually to maintain the wetlands.

COMMENT

We believe that half that amount of prime water, or less, along with drainwater, will maintain a completely adequate wetlands. Also, if it were 60,000 acre feet here, _plus_ 60,000 acre feet to replace Reno-Sparks effluent diversion, the Federal government would have to declare the Newlands Project a disaster Area.

TESTIMONY

Mr. Seges, page 20, and page 14 of the appended bill redraft, proposes a revision of Section 202 to implement projects for the rehabilitation and betterment of existing Truckee River diversion faciilities, and the authorization of the necessary funds to do so.

COMMENT

We appreciate that Mr. Seges, speaking for Sierra Pacific, supports this concept which we have advanced, as far as Derby Dam and Newlands Project improvements are concerned, in the Nevada Settlement Funds. This makes good sense in that anything which creates better efficiency on the Newlands Project and improves the operational controls of river facilities should result in less required diversion from the Truckee River to the direct benefit of endangered or threatened species below Derby Dam.

TESTIMONY

The Town of Fernley submitted written testimony showing the potential impacts on the Town, especially the possibility of elimination of Fernley's groundwater recharge. Their concerns are also incorporated in the testimony of this coalition and within our recommended amendments to S.1554.

COMMENT

We would like to comment on the nearly universal call for amendments to the bill by virtually all of the witnesses who testified at the subcommittee hearing on 6 February 1990.

Senator Richard Bryan urged "careful consideration" of amendments. Representative Barbara Vucanovich, who has offered her own version of the bill in the House, incorporated some of the more obviously needed amendments in that bill and spoke to them before the subcommittee. Each Administration witness stated in no uncertain terms that they can not support S.1554 unless it is amended. The State of Nevada suggests amendments. Most telling, the Pyramid Lake Tribe, the single largest beneficiary of the bill as written, requires a number of amendments. The Fallon Tribe, long overlooked in this dispute, indicates it simply cannot tolerate the detrimental effects of the bill without important amendments and mitigations. Churchill and Lyon Counties, the City of Fallon, the Town of Fernley, and the Truckee-Carson Irrigation District have individually and jointly demonstrated its adverse impacts on residents to whom they are responsible and have suggested specific amendments to the bill.

In short, S.1554 must be amended considerably to become the legislation it was introduced to be - namely a settlement of the extended water dispute in Northern Nevada.

FACTS appreciates the decision of Senator Bradley to provide time for these issues to be dealt with. We will work with the regional parties and with the subcommittee to amend it into such an Act.

1983

Senate Bill No. 451—Senators Wilson, Raggio, Wagner, Mello and Townsend

CHAPTER 478

AN ACT relating to the protection and preservation of state property and natural resources; directing the state board of examiners to issue state general obligation bonds to finance the state's share of costs for projects to conserve water associated with the Truckee River and the Newlands Federal Reclamation Project; and providing other matters properly relating thereto.

[Approved May 24, 1983]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The director of the state department of conservation and natural resources shall participate, on behalf of the state, in negotiations with agencies of the Federal Government and other appropriate agencies or organizations concerning projects to conserve and allocate water associated with the Truckee River and the Newlands Federal Reclamation Project, and the governor, on behalf of the State of Nevada, may enter into an agreement which defines the rights, powers, duties and obligations of the state, the Federal Government and any other appropriate agency or organization with respect to those projects, but the state's share of the costs associated with those projects must not exceed $8,000,000.

Sec. 2. After the agreement described in section 1 of this act has been entered into, the state board of examiners shall issue general obligation bonds of the State of Nevada to provide the money necessary to pay the state's share of costs associated with projects for the conservation of water associated with the Truckee River and the Newlands Federal Reclamation Project, but not more than $8,000,000 in face amount. The bonds may be issued at one time or from time to time.

Sec. 3. The legislature finds and declares that the issuance of bonds pursuant to this act is necessary for the protection and preservation of the property and natural resources of this state and for the purpose of obtaining the benefits thereof, and constitutes an exercise of the authority conferred by the second paragraph of section 3 of article 9 of the constitution of the State of Nevada.

Sec. 4. The provisions of the State Securities Law, contained in chapter 349 of NRS, apply to the issuance of bonds under this act.

Sec. 5. This act shall become effective upon passage and approval.

NOTE: This act was amended in 1989.
See SB 189 (1989 Session, enclosed),
Sections 6, 7 & 8.

1989 (See Sections 6, 7 & 8)

Senate Bill No. 189—Senators Getto, Wagner, Horn, Beyer, Coffin, Jacobsen, Joerg, O'Donnell, Rawson, Shaffer, Smith, Titus, Townsend and Vergiels

CHAPTER 785

AN ACT relating to natural resources; directing the submission to a vote of the people of a proposal to issue state general obligation bonds for the acquisition of property and water rights to protect and preserve the natural resources of the state; providing for the use of the proceeds if the issue is approved; authorizing the state board of examiners to use money from certain previously authorized general obligation bonds for the purchase of water rights and land; and providing other matters properly relating thereto.

[Approved July 5, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. At the general election to be held in the State of Nevada in 1990, there shall be submitted to the voters of the state, in the manner prescribed by chapter 349 of NRS, a proposal to issue general obligation bonds of the state for the purposes of protecting, preserving and obtaining the benefits of natural resources in an amount of not more than $47,200,000. If the proposal is carried, the bonds may be issued at one time or from time to time.

Sec. 2. Of the total bond issue:

1. An amount of $34,200,000 must be allocated to the division of state parks of the state department of conservation and natural resources for the following purposes:

(a) An amount of $7,000,000 for the acquisition of real or personal property or interests in real or personal property.

(b) An amount of $8,600,000 for the development of state park facilities.

(c) An amount of $300,000 for the preparation of plans to determine the feasibility of developing state parks, land for state parks and a means of transportation to state parks.

(d) An amount of $13,300,000 to be allocated to Clark County to develop a county regional wetlands park at the Las Vegas Wash. The money must be used to:

(1) Divert water, control erosion and make improvements to restore the existing wetlands;

(2) Acquire and develop land and water rights;

(3) Provide recreational facilities; and

(4) Provide parking and access to the park.

(e) An amount of $5,000,000 to be allocated to Washoe County to develop county regional parks. The money must be used to:

(1) Divert water and control erosion;

(2) Acquire and develop land and water rights;

(3) Provide recreational facilities; and

(4) Provide parking and access to the parks.

2. An amount of $13,000,000 must be allocated to the department of wildlife for the following purposes:

(a) An amount of $6,000,000 for the acquisition of fish, game, nongame or protected wildlife habitats and public access to the habitats by the acquisition of real or personal property or interests in real or personal property, or for the identification, inventory and protection of sensitive species and ecosystems, or any combination thereof.

(b) An amount of $2,000,000 for the development of facilities or the improvement of existing fish and wildlife habitats.

(c) An amount of $5,000,000 for the purchase or lease of water rights and associated interests in land or property for the protection of habitats of fish and game.

Sec. 3. 1. If, on the application of the administrator of the division of state parks of the state department of conservation and natural resources or the director of the department of wildlife, the interim finance committee finds that specified real or personal property, interests in real or personal property, other expenditures authorized by sections 1 to 5, inclusive, of this act, or a combination thereof, ought to be acquired or funded for any one of the purposes recited in section 2 of this act, it may direct:

(a) The state board of examiners to issue a sufficient amount of the bonds authorized pursuant to sections 1 and 2 of this act;

(b) The administrator of the division of state lands to acquire the property from the proceeds of the bonds; and

(c) The administrator of the division of state parks of the state department of conservation and natural resources or the director of the department of wildlife to develop the property from the proceeds of the bonds or make such other expenditures as are authorized by sections 1 to 5, inclusive, of this act.

2. Neither the administrator of the division of state parks of the state department of conservation and natural resources nor the director of the department of wildlife may expend more than the amount authorized for the acquisition and development of real or personal property, interests in real or personal property or a combination thereof, pursuant to sections 1 and 2 of this act, unless he has obtained prior approval from the interim finance committee.

3. Any real or personal property, interest in any real or personal property, or any combination thereof, may be acquired pursuant to the provisions of sections 1 to 5, inclusive, of this act only from willing sellers, and the acquisition of that property or interest must not have a negative impact on the distribution of water to other persons who hold valid water right claims.

4. Before any real property is acquired for the purposes of subsection 2 of section 2 of this act, except water rights, the department of wildlife shall make a good faith effort to acquire an easement for conservation pursuant to NRS 111.390 to 111.440, inclusive. The department shall keep a written record of all unsuccessful attempted acquisitions of such easements and report those records to the interim finance committee.

Sec. 4. The legislature finds and declares that the issuance of bonds pursuant to sections 1 to 5, inclusive, of this act is necessary for the protection and preservation of the property and the natural resources of this state and for the purpose of obtaining the benefits thereof, and that the issuance constitutes an exercise of the authority conferred by the second paragraph of section 3 of article 9 of the constitution of the State of Nevada.

Sec. 5. The provisions of the State Securities Law, contained in chapter 349 of NRS, apply to the issuance of the bonds and the acquisition of property under sections 1 to 5, inclusive, of this act.

Sec. 6. Chapter 478, Statutes of Nevada 1983, at page 1269, is hereby amended by adding thereto a new section to be designated as sec. 2.5, immediately following sec. 2, to read as follows:

> *Sec. 2.5. If the governor finds and declares that the agreement or agreements concerning the settlement of disputes related to the Truckee River and the Carson River which provide the basis for undertaking any project described in section 1 of this act cannot be carried out, the director of the state department of conservation and natural resources, with the cooperation of the director of the department of wildlife, may develop a plan to carry out any project described in section 1 of this act. Upon the approval of the plan by the governor, the state board of examiners shall, on behalf of the State of Nevada, issue general obligation bonds of the State of Nevada to carry out the plan, but not more than [illegible] The bonds may be issued at one time or from time to [illegible]*

Sec. 7. Section 1 of chapter 478, Statutes of Nevada 1983, at page 1269, is hereby amended to read as follows:

> Section 1. The director of the state department of conservation and natural resources [illegible], on behalf of the state, in negotiations with [illegible] Government and other appropriate agencies or organizations [illegible] projects to conserve, *distribute* and allocate water [illegible] the Truckee River, *the Carson River, the Lahontan Valley* [illegible] the Newlands Federal Reclamation Project. [, and the] [illegible] *include projects for the purchase or lease of water* [illegible] *interests in land and any water rights appurtenant thereto, or projects to mitigate losses to natural resources.* The governor, on behalf of the State of Nevada, may enter into an agreement [which defines] *or agreements which define* the rights, powers, duties and obligations of the state, the Federal Government and any other appropriate agency or organization with respect to those projects, but the state's share of the costs associated with those projects must not exceed $8,000,000 [.] *, and providing that not more than $4,000,000 of that amount may be used for the purchase or lease of water rights or interests in land and any water rights appurtenant thereto.*

Sec. 8. Section 2 of chapter 478, Statutes of Nevada 1983, at page 1269, is hereby amended to read as follows:

> Sec. 2. After *any of* the [agreement] *agreements* described in section 1 of this act [has] *have* been entered into, the state board of examiners shall issue general obligation bonds of the State of Nevada to provide the money necessary to pay the state's share of costs associated with projects *authorized pursuant to section 1 of this act* for the conservation*, distribution and acquisition* of water associated with the Truckee River*, the Carson River, the Lahontan Valley Wetlands* and the Newlands Federal Reclamation Project, but not more than

BEST AVAILABLE COPY

BEVERLY A. BRAZZANOVICH

Post Office Box 1802
Sparks, Nevada 89432-1802

April 5, 1990

The Honorable Bill Bradley
Subcommittee on Energy And Natural Resources of United States Senate
Washington, D.C. 20240

Dear Mr. Bradley:

RE: Senate Bill 1554 a settlement involving the Pyramid Lake Paiute Tribe, State of California and Nevada and other parties regarding the water of the Truckee/Carson Rivers and Lake Tahoe in Nevada and California.

I am requesting you to put my personal testimony on record and to be included with your official committee. Enclosed are copies of my personal testimony, attachments also includes newspaper articles; FINAL REPORTS OF LEGISLATIVE RECOMMENDATIONS, A REPORT OF THE SPECIAL COMMITTEES ON INDIAN AFFAIRS OF UNITED STATES SENATE in which water rights litigation on Indian country should have been addressed in this Senate Report.

As a taxpayer and a person who resides on the Pyramid Lake Indian Reservation, I feel Senate Bill 1554 does not reflect or represent the constitutes of the Pyramid Lake Tribe. Especially to those enrolled members who reside off the reservation as they cannot vote in annual tribal elections. Also, the enrolled members off the Pyramid Lake Indian Reservation has never been properly notified on the status of this important Senate Bill 1554.

I am urging you to extend the ninety (90) day negotiation period to six (6) months so the tribal members living on and off the reservation can truly understand this Senate Bill 1554. I would like to request that in this time frame public hearings be held at the various locations: Reno, Fallon, Wadsworth, Sutcliff, and Nixon, Nevada. The reason for these various locations are: transportation, conflict of employment schedules, elders who live in these areas, etc., as many do not attend meetings usually held in Nixon. I would hope the Pyramid Lake Tribe and Western Nevada Indian Agency (located in Carson City, Nevada) do a mass mail-out to notified members of Senate Bill 1554 meeting schedule. I would like to invite you to encourage your legislative aides to attend and observe these public meetings.

Keep in mind, this Senate Bill 1554 does not adequately address the Sewage Treatment Plan (plant located in the Reno/Sparks basin), to protect farmers. fisherman and recreational activity at Pyramid Lake.

Sincerely,

Beverly A. Brazzanovich

P.S. The above documents will be presented at the regularly scheduled Tribal Council Meeting on April 6, 1990 in Nixon, Nevada.

TESTIMONY BY BEVERLY A. BRAZZANOVICH

ON SENATE 1554

MEMBER PYRAMID LAKE PAIUTE TRIBE

Thank you Mr. Chairman and committee members for this opportunity to present for the record Senate 1554. I will strive to be to the point and brief.

In order to save limited tribal funds, I propose caps on the time-frame for those open-ended negotiations called for in S. 1554. Our poverty stricken tribe should not exist merely to benefit the lawyers. To achieve this, a new subsection is proposed under Section 602.

Section 602(g) - Insert language that allows for: funds appropriated for the tribe under S. 1554 shall not be used for any attorney fees.

Amend Section 101(2)(d) and (e) to include that such negotiation, from start to finish, shall be completed within 6 months.

Amend Sections 102(b), 103, and 104 to provide that such negotiations be completed and in effect within 3 months after adoption of S. 1554.

Amend Section 103 to authorize and appropriate (an amount determined by the Secretary prior to enactment of S 1554) to fund the delivery of that water allocated by Congress some 80 years ago under the Orr Ditch Decree to irrigate Dodge Flats on lands of the Pyramid Lake Indian Reservation, to be identified in the Secretary's budget to fund all necessary associated planning and construction costs specifically for Dodge Flats.

Amend Section 501 to allow a definition of economic development as meaning development of individual economics of families with any and all economic development funds to the Tribe, to allow 100 percent per capita distribution to tribal members. To justify this, I call attention to the fact that the Council used judgement funds to pay attorney fees, These funds were specifically set aside for education. The council still has some $7 million in judgment funds that were specifically set aside for economic development. Also, the tribal chairman lined out names on a legal petition presented to the council on February 2, 1990 in order to make the required number of signatures total less than one third of the last voter list. Mr. Ely violated our Constitution and By-Law and proper procedure in order to perpetuate his administration.

This harms the Pyramid Lake people by taking our water and ruining our water-based economy undermining our people in leadership.

On our reservation, only family members of our nepotism ridden council want funds intended to develop our reservation to be controlled by the council. If we had a council chosen by all members under the principal of "one man, one vote", all of us would gladly allow the council to determine our government. Instead, our council ruthlessly manipulates our community and laws to continue their despotism.

Nepotism is rampant. On February 2, 1990, the council refused to accept our petition to amend our tribal constitution to extend the vote to all tribal members. Most other tribes have an absentee ballot system. Ours does not. Our poverty stricken people and those not favored by the council are systematically brutalized through the tribal courts. We want Congress to investigate our tribal government to uncover the abuse, misuse of funds and possible embezzlement.

Sincerely,

Beverly A. Brazzanovich

Ms. Beverly A. Brazzanovich
3555 Dewey Way - Pyramid Lake
P. O. Box 1802
Sparks, NV 89432

STATE OF NEVADA
COUNTY OF WASHOE

On 2/28/96, personally appeared before me, a notary public, Ms. Beverly A. Brazzanovich, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

Kathy Gardella

NOTARY PUBLIC (Signature)

cc: Attachments

KATHY GARDELLA
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES DEC. 13, 1993